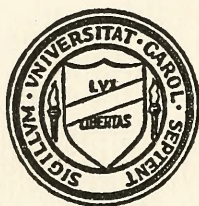




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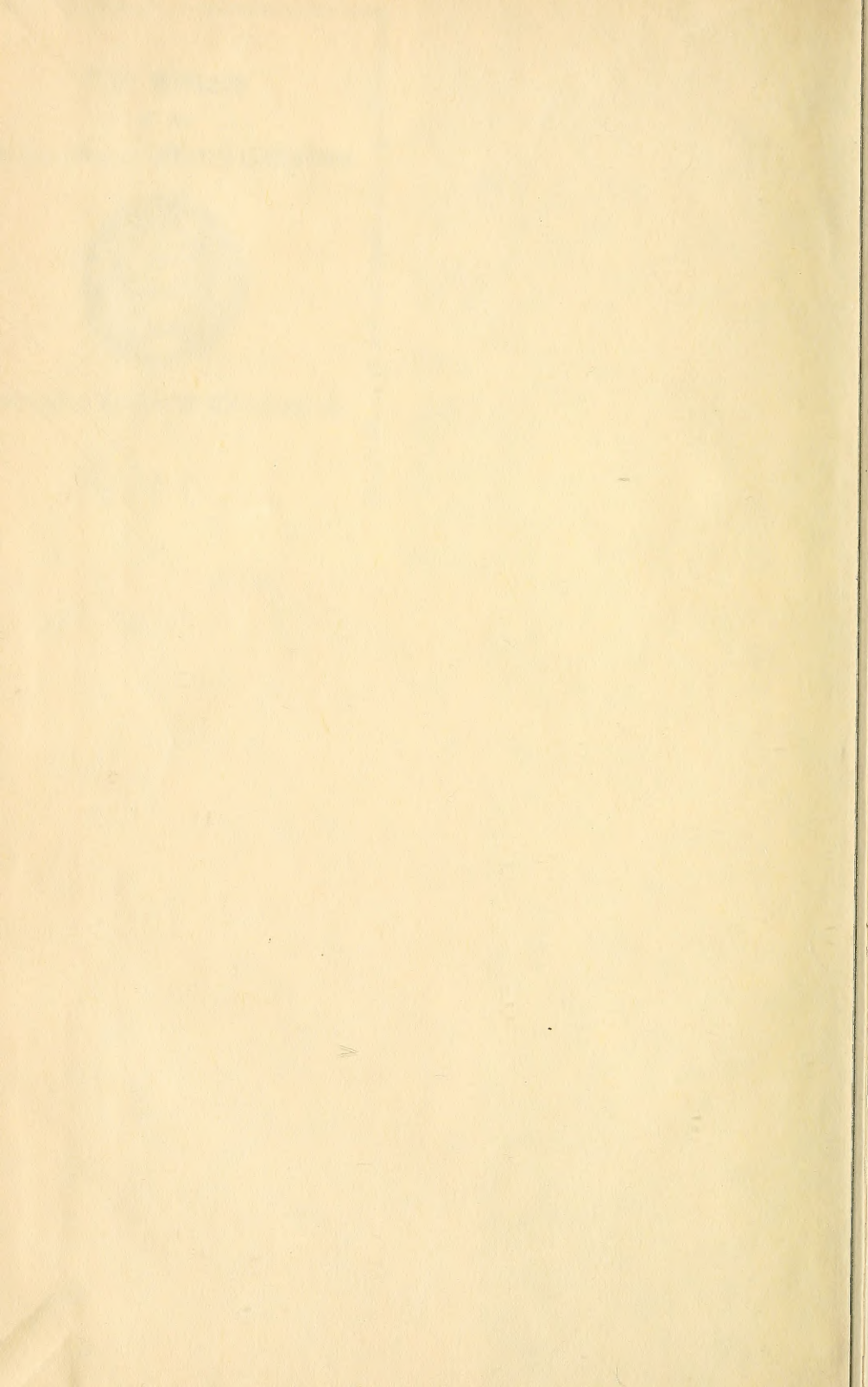
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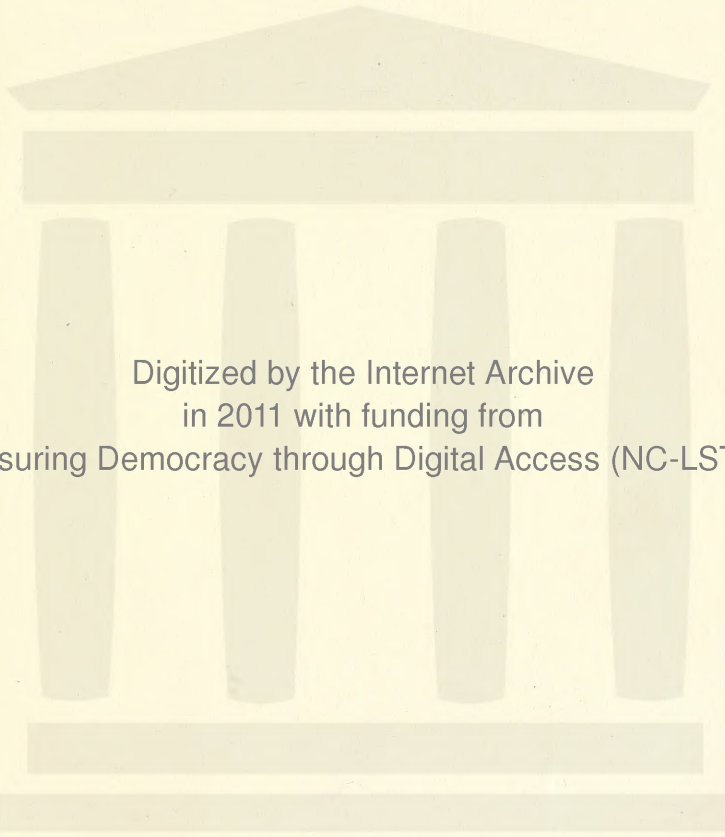
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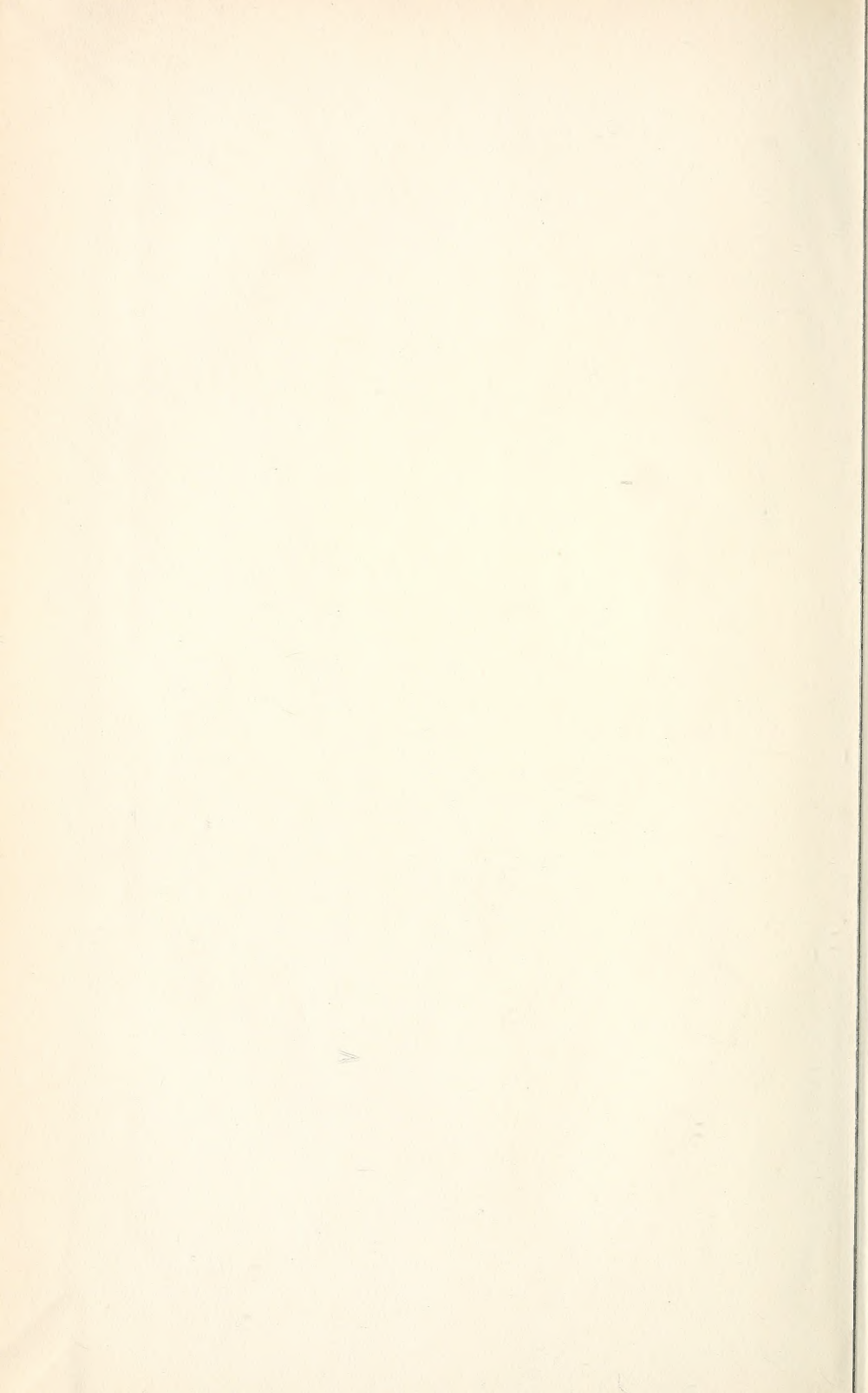
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BIENNIAL REPORT  
OF THE  
ATTORNEY GENERAL  
OF THE  
STATE OF NORTH CAROLINA

VOLUME 22  

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1932-1934

DENNIS G. BRUMMITT  
ATTORNEY GENERAL

A. A. F. SEAWELL

T. W. BRUTON\*  
ASSISTANT ATTORNEYS GENERAL

\*Succeeded Walter D. Siler, July 1, 1933.

4

BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF NORTH CAROLINA

VOLUME 22  
1891-1892

REPORT OF THE

ATTORNEY GENERAL

W. M. GARRISON

Presses of  
EDWARDS & BROUGHTON COMPANY  
STATE PRINTERS  
Raleigh, N. C.



# LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF CONSTITUTION IN 1776

	<i>Term of Office</i>
Avery, Waightstill .....	1777-1779
Iredell, James .....	1779-1782
Moore, Alfred .....	1782-1790
Haywood, J. John .....	1791-1794
Baker, Blake .....	1794-1803
Seawell, Henry .....	1803-1808
Fitts, Oliver .....	1808-1810
Miller, William .....	1810-1810
Burton, Hutchins G. ....	1810-1816
Drew, William .....	1816-1825
Taylor, James F. ....	1825-1828
Jones, Robert H. ....	1828-1828
Saunders, Romulus M. ....	1828-1834
Daniel, John R. J. ....	1834-1840
McQueen, Hugh .....	1840-1842
Whitaker, Spier .....	1842-1846
Stanly, Edward .....	1846-1848
Moore, Bartholomew F. ....	1848-1851
Eaton, William .....	1851-1852
Ransom, Matt W. ....	1852-1855
Batchelor, Joseph B. ....	1855-1856
Bailey, William H. ....	1856-1856
Jenkins, William A. ....	1856-1862
Rogers, Sion H. ....	1862-1868
Coleman, William M. ....	1868-1869
Olds, Lewis P. ....	1869-1870
Shipp, William M. ....	1870-1872
Hargrove, Tazewell L. ....	1872-1876
Kenan, Thomas S. ....	1876-1884
Davidson, Theodore F. ....	1884-1892
Osborne, Frank I. ....	1892-1896
Walser, Zeb V. ....	1896-1900
Douglas, Robt. D. ....	1900-1901
Gilmer, Robt. D. ....	1901-1908
Bickett, T. W. ....	1909-1916
Manning, James S. ....	1917-1925
Brummitt, Dennis G. ....	1925-

# LIST OF ATTORNEYS GENERAL SINCE THE ADOPTION OF CONSTITUTION IN 1776

1776 to 1792

1776-1779	John Jay
1779-1780	Robert Livingston
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2021-2022	John Jay
2022-2023	Robert Livingston
2023-2024	James Duane
2024-2025	John Jay

## LETTER OF TRANSMITTAL

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STATE OF NORTH CAROLINA,  
DEPARTMENT OF THE ATTORNEY GENERAL  
RALEIGH, 15 November, 1934.

*To His Excellency, J. C. B. EHRLINGHAUS, Governor,  
Raleigh, North Carolina.*

DEAR SIR:—In compliance with statutes relating thereto, I herewith transmit the report of this Department for the biennium 1932-1934.

Yours very truly,

DENNIS G. BRUMMITT,  
*Attorney General.*

B:P



# LETTER OF TRANSMITTAL

RECEIVED BY THE  
DIRECTOR OF THE  
BUREAU OF REVENUE

IN THE MATTER OF THE

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OF THE ESTATE OF THE LATE

IN THE MATTER OF

THE ESTATE OF THE LATE  
OF THE ESTATE OF THE LATE

## EXHIBIT I

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### CIVIL ACTIONS DISPOSED OF OR PENDING IN THE COURTS OF NORTH CAROLINA AND IN OTHER COURTS

#### PENDING IN SUPERIOR COURTS OF NORTH CAROLINA

Stedman, Treas. v. Consolidated Indemnity Company.

University of North Carolina & John D. Blake v. McNeely, et al.

Winston-Salem & Southbound Railroad v. Maxwell, Commissioner of Revenue.

Federal Land Bank v. J. H. Wilson, et al.

Norfolk Western Railway Company v. Maxwell, Commissioner of Revenue. (2 cases)

Southeastern Express Company v. Maxwell, Commissioner of Revenue. (2 cases)

J. A. Hall v. Maxwell, Commissioner of Revenue.

Ross Federal Service, Inc. v. Maxwell, Commissioner of Revenue.

M. P. Clark v. State Hospital.

Rucker Bonded Warehouse Company v. Maxwell, Commissioner of Revenue.

Mrs. Sallie Holderfield v. George Ross Pou, et al.

The Texas Company v. Board of Education.

Maxwell, Commissioner of Revenue, v. L. D. Melvin.

Maxwell, Commissioner of Revenue, v. E. G. Richardson.

Allison, et al. v. Sharpe, et al.

T. A. Clark v. C. B. Medford, Admr.

State Hospital v. Leon G. Stevens, Gdn.

State Hospital v. Maggie Stewart.

State Hospital v. Security National Bank.

State Hospital v. Carrie L. McLean, Admx.

State Hospital v. Thos. C. Hoyle, Gdn.

Utilities Commissioner v. Plemmons.

Utilities Commissioner v. W. Hoke Smith.

Utilities Commissioner v. Wade H. Rhea.

Utilities Commissioner v. Mackey, et al.

Belk Bros Company v. Maxwell, Commissioner of Revenue.

Metro-Goldwyn-Mayer Distributing Corporation v. Maxwell, Commissioner of Revenue.

City of Greensboro v. James T. Enoch, et ux., etc.  
City of Greensboro v. John Sharpe, et ux., etc.  
Ann Cannon Reynolds, et al. v. Zachary Smith Reynolds, et al. and  
Maxwell, Com'r of Revenue.

#### DISPOSED OF IN SUPERIOR COURTS OF NORTH CAROLINA

State v. H. L. Drake.  
Maxwell, Commissioner of Revenue, v. Fidelity Bank.  
R. K. O. Distributing Company v. Maxwell, Commissioner of Revenue.  
In re: Central Bank & Trust Company.  
First Nat'l Bank, Receiver, Wright Estate, v. Maxwell, Commissioner  
of Revenue.  
Thos. R. Hocutt v. University of North Carolina.  
State and Park Commission v. Surety Companies.  
Northcutt v. Peoples Bonded Warehouse Company.  
State ex rel. Maxwell, Commissioner, v. Reynolds Tobacco Company.  
Long v. Anderson and Owen.  
General Electric Supply Company v. State College.  
State v. Standard Oil Company, et al.  
Stedman, State Treasurer, and Maxwell, Commissioner, v. Holston Oil  
Co., et al.  
U. S. Mortgage Company v. Maxwell, Commissioner of Revenue.  
Stedman, Treasurer, v. Southern Surety Company.  
Hackney v. Hood, Commissioner of Banks.  
Ashlyn L. Cannon v. Maxwell, Commissioner of Revenue.  
Hans Rees' Sons, Inc. v. Maxwell, Commissioner of Revenue.  
Suncrest Lumber Company v. Maxwell, Commissioner of Revenue.  
Ravensford Lumber Company v. Maxwell, Commissioner of Revenue.  
Atlantic Coast Line Railway v. Maxwell, Commissioner of Revenue.

#### PENDING IN THE SUPREME COURT OF NORTH CAROLINA

State ex rel. State Hospital v. Security National Bank.  
State and Park Commission v. Surety Companies.  
State ex rel. Dennis G. Brummitt v. Herman W. Winburn.  
State ex rel. Dennis G. Brummitt v. Harry Gorson.  
Atlantic Coast Line Railroad v. Maxwell, Commissioner of Revenue.

#### DISPOSED OF IN THE SUPREME COURT OF NORTH CAROLINA

Stone Company v. Maxwell, Commissioner of Revenue, 203 N. C., 151.  
Hackney v. Hood, Commissioner of Banks, 203 N. C., 486.  
University of North Carolina v. City of High Point, 203 N. C., 558.



- Elliott v. Board of Equalization, 203 N. C., 749.  
Commissioner of Revenue v. Realty Company, 204 N. C., 123.  
Stedman, Treasurer, v. Winston-Salem, 204 N. C., 203.  
State of North Carolina v. Champion Fibre Company, 204 N. C., 295.  
Birchfield v. Dept. Conservation and Development, 204 N. C., 217.  
Maxwell, Commissioner of Revenue, v. Kent Coffey Mfg. Company,  
204 N. C., 365.  
State v. Standard Oil Company, et al., 205 N. C., 123.  
Cannon v. Maxwell, Commissioner of Revenue, 205 N. C., 420.  
Perdue v. Board of Equalization, 205 N. C., 730.  
Hollowell v. Dept. Conservation and Development, 206 N. C., 206.  
Utilities Commissioner v. Mackey, 206 N. C., 554.  
Utilities Commissioner v. Browning, 206 N. C., 557.  
Utilities Commissioner v. Sutton, 206 N. C., 559.  
In re: Bank of Ayden, 206 N. C., 821.  
Northeutt v. Peoples Bonded Warehouse Company, et al., 206 N. C., 842.  
Hemric, et al. v. Board of Commissioners, 206 N. C., 845.  
Reed v. Lavendar Brothers, et al., 206 N. C., 898.  
State ex rel. Maxwell, Com'r of Revenue, v. S. J. Hinsdale, et al., 207  
N. C., 37.

DISPOSED OF IN GENERAL COUNTY COURT OF BUNCOMBE COUNTY

S. K. Young v. J. C. Champion.

DISPOSED OF BEFORE INDUSTRIAL COMMISSION

- Price v. State Hospital.  
Robert W. Tolar v. N. C. National Guard.  
Bell H. Stronach v. Dept. of Revenue.  
Gertrude Upchurch v. Dept. of Attorney General.

DISPOSED OF IN SUPREME COURT OF UNITED STATES

- State of Alabama v. State of Arizona, et al., 291 U. S., 286, 78 L. ed.,  
798.  
Wallace B. Davis v. North Carolina, 287 U. S., 645., 77 L. ed., 558.  
Wallace B. Davis, Luke Lea and Luke Lea, Jr., v. State of North  
Carolina, 278 U. S. 649., 77 L. ed., 561.  
Luke Lea and Luke Lea, Jr. v. State of North Carolina, 287 U. S., 668.  
77 L. ed. 576.  
Kent Coffey Mfg. Co. v. Maxwell, Commissioner of Revenue, 291 U. S.  
642, 78 L. ed., 1040.  
State of Tenn. ex rel. Luke Lea, et al., v. Laurence E. Brown, et al.,

Agents of North Carolina, 292 U. S. 638, 78 L. ed., 1491.

George Whitfield v. State of North Carolina, 293 U. S.—79 L. ed.—

PENDING IN UNITED STATES DISTRICT COURT

Central Hanover Bank & Trust Co. v. Norfolk Southern Railroad Co.

American Telephone & Telegraph Co. v. Maxwell, Commissioner of Revenue.

DISPOSED OF IN UNITED STATES DISTRICT COURT

Valvoline Oil Company v. Federal Oil Company.

United States v. First and Citizens Bank.

Transportation Corporation v. Self.

City of Winston-Salem v. Powell Paving Company, et al., 7 Fed. Supp., 424.

PENDING IN SUPREME COURT OF NEW YORK STATE

Loftin, Receiver v. University of North Carolina, et al.

DISPOSED OF IN CORPORATION COURT OF VIRGINIA

State ex rel. State Hospital v. First National Bank of Danville, Va.

DISPOSED OF IN CIRCUIT COURT OF APPEALS

United States v. Doughton, et al., 62 Fed. (2d) 936.

## EXHIBIT II

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LIST OF CRIMINAL CASES ARGUED BY THE ATTORNEY GENERAL AND HIS ASSISTANTS BEFORE THE SUPREME COURT, FALL TERM, 1932; SPRING TERM, 1933; FALL TERM, 1933; SPRING TERM, 1934.

### FALL TERM, 1932

1. State v. Batemen, from Pasquotank; A. D. W., defendant appealed; no error.
2. State v. Briggs, from Edgecombe; violation of weights and measures act; defendant appealed; reversed.
3. State v. Brown, from Duplin; murder; appealed by defendant, remanded.
4. State v. Bryson, from Jackson; murder 2nd degree; appeal by defendant; no error.
5. State v. Burleson, et al., from Mitchell; breaking and entering; appeal by defendants; new trial.
6. State v. Byrd, from Mitchell; worthless check; appeal by defendant; new trial.
7. State v. Call, from Davie; violation prohibition law; appeal by defendant; no error.
8. State v. Cope, from Haywood; manslaughter; appeal by defendant; new trial.
9. State v. Dills, from Swain; manslaughter; appeal by defendant; no error.
10. State v. Ellis, from Davie; murder 2d degree; appeal by defendant; no error.
11. State v. Everhardt, from Rowan; public nuisance; appeal by defendant; no error.
12. State v. Fogleman, from Rockingham; murder 1st degree; appeal by defendant; no error.
13. State v. Franklin, from Avery; worthless check; appeal by defendant; reversed.
14. State v. French, from Guilford; S. A. W. D. W.; appeal by defendant; no error.
15. State v. Garner, et al., from Duplin; bank robbery; appeal by defendants; no error.



16. State v. Golden, et al., from Surry; violation prohibition law; appeal by defendants; appeal dismissed.

17. State v. Gossett, from Guilford; abandonment, etc.; appeal by defendant; no error.

18. State v. Gray, from Cabarrus; homicide; appeal by defendant; no error.

19. State v. Gregory, from Guilford; manslaughter; appeal by defendant; new trial.

20. State v. Grier, from Gaston; murder 1st degree; appeal by defendant; no error.

21. State v. Harrell, from Vance; municipal ordinance; appeal by defendant; no error.

22. State v. Jones, from Wake; murder 1st degree; appeal by defendant; no error.

23. State v. Ledford, from Clay; manslaughter; appeal by defendant; reversed.

24. State v. Manos, from Buncombe; abandonment, etc.; appeal by defendant; no error.

25. State v. McKeithan, from Hoke; arson; appeal by defendant; no error.

26. State v. McLamb, from Sampson; secret assault; appeal by defendant; no error.

27. State v. Pardue, from Wilkes; embezzlement; appeal by defendant; new trial.

28. State v. Raper, et al., from Forsyth; conspiracy; appeal by defendants; new trial.

29. State v. Rawls, from Pitt; embezzlement; appeal by defendant; dismissed.

30. In re: Scales, from Forsyth; contempt; appeal by respondent; affirmed.

31. State v. Shepherd, from Wilkes; forcible trespass; appeal by defendant; new trial.

32. State v. Shipman, from Transylvania; violation banking laws; motion by State to docket and dismiss; error and remanded.

33. State v. Stafford, from Wayne; murder 1st degree; appeal by defendant; affirmed.

34. In re: Stiers, from Rockingham; disbarment proceeding; appeal by State; affirmed.

35. State v. Stewart, from Surry; breaking and entering; appeal by defendant; no error.

36. State v. Stinnett, from Orange; trespass, etc.; appeal by defendant; reversed.

37. State v. Varner, from Haywood; abandonment, etc.; appeal by defendant; death of defendant, action abates.

38. State v. Wallace, from Lee; murder 1st degree; appeal by defendant; no error.

#### DOCKETED AND DISMISSED ON MOTION

39. State v. Clyde Jones, from Green.

40. State v. Mack Rhodes, from Henderson.

41. State v. Davis, from Buncombe.

42. State v. Lea, from Buncombe.

43. State v. Arnold and Champion, from Wake.

44. State v. Whitley, from Guilford.

45. State v. Gettys, from McDowell.

46. State v. Noland, from Buncombe.

47. State v. Hyatt, from Haywood.

48. State v. Gatewood, et al., from Moore.

49. State v. Bryan, from Forsyth.

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#### SPRING TERM, 1933

50. State v. Ammons, et al., from Buncombe; mutilation; appeal by defendants; no error.

51. State v. Banks, from McDowell; manslaughter; appeal by defendant; no error.

52. State v. Brown, from Duplin; manslaughter; appeal by defendant; no error.

53. State v. Carter, from Bertie; murder 2d degree; appeal by defendant; reversed.

54. State v. Casey, from Lenoir; murder 1st degree; appeal by defendant; no error.

55. State v. Dula, from Forsyth; embezzlement; appeal by defendant; new trial.

56. State v. Gillespie, et al., from Alleghany; robbery; appeal by defendants; new trial.

57. State v. Harris, from Wake; carnal knowledge; appeal by defendant; no error.

58. State v. Ingram, et al., from Forsyth; lottery; appeal by defendants; no error.

59. State v. Langley, from Buncombe; murder 1st degree; defendants appeal as to judgment; remanded.

60. State v. Layton, from Wake; abortion; appeal by defendant; no error.



61. State v. Lowe, from Guilford; receiving; appeal by defendant; reversed.
62. State v. McClure, from Avery; embezzlement; appeal by defendant; no error.
63. State v. McNair, from Guilford; murder 1st degree; appeal by defendant; no error.
64. State v. Moore, et al., from New Hanover; conspiracy to blackmail; appeal by defendants; no error.
65. State v. Moore, et al., from Sampson; violation banking laws; appeal by defendants; motion to dismiss allowed.
66. State v. Noland, from Buncombe; bribery; appeal by defendant; no error.
67. State v. Patrick, from Washington; seduction; appeal by defendant; reversed.
68. State v. Raper, from Forsyth; conspiracy to rob; appeal by defendant; reversed.
69. State v. Smith, from Forsyth; breaking, entering, etc.; appeal by defendant; new trial.
70. State v. Stone, from Wilkes; murder 1st degree; appeal by defendant; no error.
71. State v. Whiteside and Cannon, from Buncombe; conspiracy to rob; appeal by defendant Cannon; no error.

#### DOCKETED AND DISMISSED ON MOTION

72. State v. Hines, from Forsyth.
73. State v. Lassiter, from Wake.
74. State v. Rogers, from Wake.
75. State v. Hutchins, from Wake.
76. State v. Cranfill, from Forsyth.
77. State v. Fowler, from Davidson.
78. State v. Davis, from Guilford.
79. State v. Riddle and Huffman, from Guilford.

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#### FALL TERM, 1933.

80. State v. Bailey, et al., from Lee; murder 2d degree; appeal by defendants; no error.
81. State v. Baldwin, et al., from Buncombe; assault; appeal by defendants; affirmed.
82. State v. Bell, from Macon; conspiracy to murder; appeal by defendant; new trial.



83. State v. Blakeney, from Union; false entries; appeal by defendant; motion of defendant to dismiss allowed.

84. State v. Blakeney, from Union; false entries; appeal by defendant; motion of defendant to dismiss allowed.

85. State v. Breece, from Wake; embezzlement; appeal by defendant; new trial.

86. State v. Carter, from Guilford; municipal ordinance; appeal by defendant; no error.

87. State v. Cofer, from Forsyth; bribery; appeal by defendant; no error.

88. State v. Cooper, from Durham; murder 1st degree; appeal by defendant; no error.

89. State v. Davidson, et al., from Cherokee; conspiracy to defraud; appeal by defendants; no error.

90. State v. Eccles, from Forsyth; manslaughter; appeal by defendant; no error.

91. State v. Evans, from Wake; doing business without license; appeal by defendant; no error.

92. State v. Ferrell, from Durham; murder 1st degree; appeal by defendant; no error.

93. State v. Fowler and Brincefield, from Forsyth; lottery; appeal by defendants; no error as to Fowler; reversed as to Brincefield.

94. Goff, et al., from New Hanover; assault; appeal by defendants; remanded.

95. State v. Hall, from Rockingham; murder 2d degree; appeal by defendant; no error.

96. State v. Ham, from Durham; murder 2d degree; appeal by defendant; no error.

97. State v. Harwood, from Wake; petition to vacate disbarment; appeal by defendant; affirmed.

98. State v. Johnson, from Wake; A. D. W.; appeal by defendant; no error.

99. State v. Keaton, from Forsyth; murder 1st degree; appeal by defendant; new trial.

100. State v. Norris, from Columbus; prohibition law; appeal by defendant; no error.

101. State v. Pike, et al., from Buncombe; conspiracy to rob; appeal by defendants; appeal dismissed.

102. State v. Riddle, et al., from Guilford; highway robbery; appeal by defendants; no error.

103. State v. Rowland, from Rowan; abandonment, etc.; appeal by defendant; no error.

104. State v. Sinodis, from Guilford; perjury; appeal by defendant; reversed.

105. State v. Tatum, from Orange; worthless check; appeal by defendant; new trial.

106. State v. Wall, from Rockingham; murder 2d degree; appeal by defendant; no error.

107. State v. Welborn, from Guilford; proceeding on appearance bond; appeal by respondent; error and remanded.

108. State v. Wilson, from Burke; burning barn; appeal by defendant; no error.

#### DOCKETED AND DISMISSED ON MOTION

109. State v. Edwards, from Mecklenburg.

110. State v. Johnson, from Hoke.

111. State v. Edmundson, from Wayne.

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#### SPRING TERM, 1934

112. State v. Aldridge, from Avery; conspiracy to assault; appeal by defendant; no error.

113. State v. Anthony, from Washington; breaking, entering, etc.; appeal by defendant; reversed.

114. State v. Bank, from McDowell; worthless check; appeal by defendant; no error.

115. State v. Bittings, from Person; murder 1st degree; appeal by defendant; no error.

116. State v. Brooks, from Durham; murder 1st degree; appeal by defendant; no error.

117. State v. Cohoon, from Pasquotank; embezzlement; appeal by defendant; reversed.

118. State v. Crockett, from Forsyth; murder 1st degree; appeal by defendant; no error.

119. Currie, et al., from New Hanover; assault, robbery, etc.; appeal by defendants; dismissed.

120. State v. Dalton, from Henderson; murder 1st degree; appeal by defendant; no error.

121. State v. Dickey, from Mecklenburg; manslaughter; appeal by defendant; new trial.

122. State v. Dula, from Forsyth; embezzlement; appeal by defendant; no error.

123. State v. Ferrell, from Durham; murder 1st degree; appeal by defendant; dismissed.



124. State v. Henderson, from Pender; seduction; appeal by defendant; new trial.

125. State v. Hollingsworth, from Forsyth; false pretense; appeal by movant; affirmed.

126. State v. Jones, et al., from Moore; murder 2d degree; appeal by defendants; no error.

127. State v. Keaton, from Forsyth; murder 1st degree; appeal by defendant; no error.

128. State v. Keeter, from Mecklenburg; manslaughter; appeal by defendant; no error.

129. State v. Kelly, et al., from Vance; assault and kidnapping; appeal by defendants; remanded.

130. State v. Klutz, et al., from Anson; house burning; appeal by defendants; new trial.

131. State v. Lee, from Wake; A. D. W.; appeal by defendant; new trial.

132. State v. Ray, from Orange; embezzlement; appeal by defendant; new trial.

133. State v. Sasseen, et al., from Mecklenburg; municipal ordinance; special verdict; appeal by State; affirmed.

134. State v. Satterfield, from Wayne; murder 1st degree; case carried over to Fall Term, 1934.

135. State v. Sheffield, from Haywood; murder 1st degree; appeal by defendant; no error.

136. State v. Shore, from Forsyth; embezzlement; appeal by defendant; affirmed.

137. State v. Stefanoff, et al., from Alexander; murder 1st degree; appeal by defendants; no error.

138. State v. Whitfield, from Guilford; rape; appeal by defendant; no error.

139. State v. Wilcox, from Robeson; prohibition law; appeal by defendant; new trial.

140. State v. Wilcox, from Robeson; assault; appeal by defendant; new trial.

#### DOCKETED AND DISMISSED ON MOTION

141. State v. Dallas Hamlet, from Duplin.

142. State v. Brown, from Forsyth.

143. State v. Bradsher, from Moore.

144. State v. John B. Thomas, from Richmond.

145. State v. Nelms, from Guilford.



- 146. State v. Nelms, from Guilford.
- 147. State v. Lovings, from Guilford.
- 148. State v. Geo. Wall, et al., from Forsyth.

## SUMMARY OF CASES

Affirmed on defendant's appeal.....	67
New trial or reversed on defendant's appeal.....	32
Affirmed on State's appeal.....	2
Remanded on defendant's appeal.....	6
Death—action abates.....	1
Modified and affirmed.....	1
Carried over to Fall Term, 1934.....	1
Appeal dismissed.....	38
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Total .....	148

# CRIMINAL STATISTICS

## STATEMENT A

THE FOLLOWING STATEMENT SHOWS THE CRIMINAL CASES DISPOSED OF IN THE SUPERIOR COURTS  
DURING THE FALL TERM, 1932, AND SPRING TERM, 1933

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alamance.....	57	15	-----	70	2	61	2	8	1	72
Alexander.....	48	3	-----	50	1	26	20	5	-----	51
Alleghany.....	11	1	-----	12	-----	9	-----	3	-----	12
Anson.....	25	28	-----	50	3	41	5	5	2	53
Ashe.....	70	2	-----	70	2	68	4	-----	-----	72
Avery.....	134	-----	-----	120	14	81	11	40	2	134
Beaufort.....	38	43	-----	78	3	41	12	28	-----	81
Bertie.....	10	42	-----	48	4	32	14	6	-----	52
Bladen.....	21	8	-----	28	1	19	4	6	-----	29
Brunswick.....	43	14	-----	57	-----	37	17	2	1	57
Buncombe.....	189	114	-----	275	28	261	40	1	1	303
Burke.....	48	14	-----	59	3	50	5	6	1	62
Cabarrus.....	184	84	-----	263	5	161	34	72	1	268
Caldwell.....	34	5	-----	39	-----	28	6	5	-----	39
Camden.....	3	8	-----	11	-----	6	2	2	1	11
Carteret.....	17	12	-----	29	-----	29	-----	-----	-----	29
Caswell.....	54	52	-----	103	3	79	22	5	-----	106
Catawba.....	47	3	-----	50	-----	50	-----	-----	-----	50
Chatham.....	17	19	-----	35	1	33	3	-----	-----	36
Cherokee.....	133	6	-----	135	4	109	24	6	-----	139
Chowan*.....	8	4	-----	10	2	10	2	1	-----	13
Clay.....	45	2	-----	47	-----	33	1	13	-----	47
Cleveland.....	74	25	-----	91	8	73	7	18	1	99
Columbus.....	117	58	1	164	12	126	31	16	3	176
Craven.....	51	99	-----	143	7	101	19	30	-----	150
Cumberland.....	19	26	-----	44	1	28	2	15	-----	45
Currituck.....	2	6	-----	8	-----	4	-----	4	-----	8
Dare.....	5	1	-----	6	-----	3	2	1	-----	6
Davidson.....	246	45	-----	278	13	246	27	18	-----	291
Davie.....	52	27	-----	79	-----	56	6	17	-----	79
Duplin.....	61	74	-----	127	8	84	16	35	-----	135
Durham.....	132	169	-----	282	19	222	48	31	-----	301
Edgecombe.....	56	76	-----	124	8	77	29	25	1	132
Forsyth.....	503	536	1	940	100	852	183	-----	5	1,040
Franklin.....	40	21	-----	60	1	39	14	8	-----	61
Gaston.....	226	86	-----	300	12	160	58	93	1	312
Gates.....	3	9	-----	12	-----	6	2	3	1	12
Graham.....	82	-----	8	89	1	42	14	34	-----	90
Granville.....	68	90	-----	152	6	119	17	22	-----	158
Greene.....	30	46	-----	71	5	56	8	10	2	76
Guilford.....	637	284	-----	865	56	709	125	80	7	921
Halifax.....	35	44	-----	73	6	60	13	5	1	79
Harnett.....	74	44	-----	108	10	72	17	28	1	118
Haywood.....	196	9	-----	195	10	105	28	69	3	205
Henderson.....	74	21	-----	77	18	49	20	25	1	95
Hoke.....	15	19	1	34	1	25	4	3	3	35
Hertford.....	33	66	-----	99	-----	94	5	-----	-----	99
Hyde.....	12	14	-----	25	1	20	3	3	-----	26
Iredell.....	56	22	-----	77	1	71	4	3	-----	78
Jackson.....	121	10	8	132	7	90	20	29	-----	139

## STATEMENT A—Continued

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Johnston.....	60	25		83	2	84			1	85
Jones.....	26	52		73	5	46	15	17		78
Lee.....	15	19		34		29	5			34
Lenoir.....	66	70		130	6	91	30	14	1	136
Lincoln.....	53	10		60	3	49	6	8		63
Macon.....	106	11		114	3	76	5	36		117
Madison.....	52	1		47	6	33	19	1		53
Martin.....	48	26		74		61	8	5		74
McDowell.....	75	4		75	4	47	10	22		79
Mecklenburg....	480	393		788	85	463	118	289	3	873
Mitchell.....	141			133	8	72	19	50		141
Montgomery*....	78	39		112	5	45	5	68		118
Moore.....	40	38		74	4	50	8	20		78
Nash.....	88	89		169	8	96	36	43	2	177
New Hanover....	54	158		195	17	149	63			212
Northampton....	15	86		100	1	72	12	17		101
Onslow.....	86	80		157	9	133	12	21		166
Orange.....	105	58		159	4	113	27	22	1	163
Pamlico.....	7	9		16		10	6			16
Pasquotank.....	29	29		56	2	35	12	11		58
Pender.....	8	10		18		14	4			18
Perquimans.....	7	3		8	2	3	3	4		10
Person.....	24	16		39	1	21	11	8		40
Pitt.....	98	89		175	12	109	30	48		187
Polk.....	29	11		38	2	30	8	2		40
Randolph.....	130	38		161	7	93	13	62		168
Richmond.....	97	46		138	5	97	12	33	1	143
Robeson.....	187	98	117	380	22	190	43	165	4	402
Rockingham.....	123	65		176	12	112	35	32		188
Rowan.....	134	47		166	15	96	35	50		181
Rutherford.....	48	24		67	5	58	14			72
Sampson.....	74	50	4	123	5	94	18	16		128
Scotland.....	22	23		43	2	42	3			45
Stanly.....	34	22		51	5	52	4			56
Stokes.....	78	36		108	6	93	11	10		114
Surry.....	132	23		146	9	123	30	2		155
Swain.....	163	1	30	185	9	114	27	53		194
Transylvania....	107	19		125	1	77	7	41	1	126
Tyrrell.....	13	10		23		12	4	7		23
Union.....	47	38		84	1	64	6	15		85
Vance.....	63	46		104	5	70	26	13		109
Wake.....	335	332		615	52	434	88	144	1	667
Warren.....	18	27		42	3	38	6	1		45
Washington.....	21	12		33		8	10	11	4	33
Watauga.....	46	4		49	1	38		12		50
Wayne.....	86	96		174	8	94	22	64	2	182
Wilkes.....	302	42		310	34	155	47	139	3	344
Wilson.....	198	222		387	33	136	61	222	1	420
Yadkin.....	138	8		141	5	92	26	28		146
Yancey.....	107	1		101	7	42	12	51	3	108
Totals.....	8,749*	5,062	170	13,153	828*	9,217	1,982	2,716	68	13,983

\*Corporation.





## STATEMENT B

THE FOLLOWING STATEMENT SHOWS THE OFFENSES WITH WHICH DEFENDANTS WERE CHARGED IN THE SUPERIOR COURTS OF THE STATE DURING THE FALL TERM, 1932, AND SPRING TERM, 1933

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burgery	Burglary—First Degree	Burglary—Second Degree
Alamance.....					4	3	2	3	1	1					1		
Alexander.....						1		9									
Alleghany.....						4											
Anson.....					1				2			1					
Ashe.....	4						1	7									
Avery.....	2			13		4	1	3				1					
Beaufort.....						4	3	3					9				2
Bertie.....									5	1			4				
Bladen.....								5									
Brunswick.....						1		1		1		1	5				
Buncombe.....	5				3	2	2	37	3	5			60	1			1
Burke.....	3			1		3	5	1					4				
Cabarrus.....	6				5		7	32		1			27		1		
Caldwell.....				1		1		1					7				
Canden.....																	
Carteret.....								6					2				
Caswell.....					1			18		1							
Catawba.....						1	4	3	2	1			12				
Chatham.....					1	1	1			1			1				
Cherokee.....	3					7	1	22	1				5				





STATEMENT B—Continued

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burglary	Burglary—First Degree	Burglary—Second Degree
Johnston.....	2					3	1	5									
Jones.....	1					7	2	4					1				
Lee.....						6		2					8				
Lenoir.....	1				1		2	9	3	1			1				2
Lincoln.....	1				1	1	2	3				1	14				
Macon.....	4			5		3	2	9									4
Madison.....					1	1		6									
Martin.....							2	10									
McDowell.....	2							1					18				
Mecklenburg.....	8				1	23	8	77	20	3		5	7		6		1
Mitchell.....	5	2				2	9	14		1			11	1			
Montgomery.....	1			1		9		12	2	1	3		2				
Moore.....			3			4		7	7	1			17				
Nash.....	3		3	3		4	1	21	3	1			5				1
New Hanover.....	1			1	1	5	5	22	3	1			5				2
Northampton.....	1			1		9		16		4			3				
Oswow.....		1				1	5	32	1				18				2
Orange.....		1	1			10	4	25	1		2		7				
Pamlico.....						1	1	2									
Pasquotank.....						4		10	1	1					1		

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STATEMENT B—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Alamance.....											4	1					
Alexander.....	1										1	1					
Alleghany.....		1							1					6			
Anson.....														1			
Ashé.....		12							5			1		1			4
Avery.....	2	2							2		2			3			
Beaufort.....						1	1	2									
Bertie.....		1															
Bladen.....															1		4
Brunswick.....	1																
Buncombe.....									6			2		2			1
Burke.....														1			
Cabarrus.....		9				1					2	2		1			1
Caldwell.....											1				2		
Camden.....						1	1										
Carteret.....	1																1
Caswell.....		1					1		3			2					
Catawba.....		1									1	1			1		
Chatham.....		1															2
Cherokee.....		7							1								





STATEMENT B—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Johnston.....	1																2
Jones.....	1	5							9						1		1
Lee.....																	
Lenoir.....		3										4					
Lincoln.....					1		1				1	2					2
Macon.....		7															
Madison.....		4						1	3					4			3
Martin.....											1			2			2
McDowell.....							1					1		1			3
Mecklenburg.....		21				1	2				16	1				1	4
Mitchell.....		2					1							1			3
Montgomery.....	1	2						1									1
Moore.....					2			4			3			6	4		
Nash.....	1	1									1			1	1		
New Hanover.....		5			2						1	1	1	4	1		11
Northampton.....		3															2
Onslow.....		3						1									1
Orange.....									2						2		4
Pamlico.....																	
Pasquotank.....	1							1			2				1		





STATEMENT B—Continued

Counties	Forgery	Formication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Alamance.....	3				18	1		11				3	1		3			
Alexander.....					2			6				1			4			
Alleghany.....								1										
Anson.....		2			14			15			2				5	2		
Ashe.....		2			4		4	9			2				2			
Avery.....		6	1			1		26			1				1			
Beaufort.....		2			8			16			1	1	3		1			
Bertie.....					7			3							5			
Bladen.....								4			2	3			3			
Brunswick.....							1	14				1			2			
Buncombe.....	2	3			5	2		90			3	2			12			
Burke.....	5	2					3	7			1	1			4			
Cabarrus.....	7	2					2	72			5	19			4			
Caldwell.....								9			1				1			
Camden.....								4										
Cartersville.....					2	1		9										
Caswell.....		2						22			1	1	5		2	1		
Catawba.....								11							3			
Chatham.....		2			4			6			2	1			3			
Cherokee.....	1						1	24				6			2	1		



STATEMENT B—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Johnston.....					17			24			1	2		1	4			
Jones.....		1				1		18			2					3		
Lee.....					3			3			3			1	2			
Lenoir.....	3		1	1	14			29			6	7			5		4	
Lincoln.....	1							19				1			1			
Macon.....	1	1			7		3	14				5			6			
Madison.....		3			9			6							2			
Martin.....					24			20			1	1		1	1			
McDowell.....	4	3				1		9				2		2	1			
Mecklenburg.....	6		7	1	15		8	164	1		9	60	10	1	10	8	1	
Mitchell.....	4	6	3					24							1			
Montgomery.....	1				19		1	14				4					1	
Moore.....	2							22							4			
Nash.....		1			12		4	36			4		1		3	1		
New Hanover.....	1		1		11			51			13	8			5			
Northampton.....	1					1		23				1	1		1		1	
Onslow.....		4					1	23		1	2	4			1	1	4	
Orange.....					5	1	1	33				4				1	1	
Pamlico.....	2							4										
Pasquotank.....	1		1		4		1	15				2			1			1



Pender.....	172	136	71	3	603	16	87	2,481	9	6	187	582	39	12	311	55	26	3
Perquimans.....	1	1					4	3			1					3		
Pitt.....	3						1	56			2	4				5		
Polk.....	1				1			3			1					1		
Randolph.....	2							36			3	3				4		
Richmond.....	3						1	10			1	9				5	3	
Robeson.....	5	15						62			8	19	1			7	3	
Rockingham.....	1				14		1	22			3	9		1		3		3
Rowan.....	3				1			30			5	7	1			3	1	
Rutherford.....	1				3			2				2				1		
Sampson.....			1					27			4							
Scotland.....								11			3			1				
Stanly.....	1					1		13			1					1		
Stokes.....		1			4			15			2	4				1		1
Surry.....	1	2			17			18			2	3	2			3		
Swain.....	1	5	1		2			31				5				1		
Tennessee.....																		
Tyrell.....			1					25					1			2	1	
Union.....	3							9			1	2				3		
Vance.....	1	2	1					26				5				2		
Wake.....	7		5		73		4	140	1		12	16				18	5	
Warren.....	1										1	2				1		
Washington.....								5									1	
Watauga.....								4			1	1						
Wayne.....	2	1			19			33		4	4	3				5	2	
Wilkes.....	7	6	1		19	1		42				7				11	1	3
Wilson.....	7	3	6	1	26			65			7	19	4	1		2		
Yadkin.....	1	3			14			17				8						
Yancey.....	1	2			1			12										
Totals.....	172	136	71	3	603	16	87	2,481	9	6	187	582	39	12	311	55	26	3

STATEMENT B—Continued

Counties	Official Misconduct	Perjury	Poisoning	Prohibition Laws— Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws— Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Alamance.....				4					7		3						2	72
Alexander.....				8	7						1							51
Alleghany.....				1					1					1		1		12
Anson.....				2							1						2	53
Ashe.....				13							1							72
Avery.....		1		50	2	1		1		3	2					3	3	134
Beaufort.....		1		8							1			2		3	6	81
Bertie.....			3								1		18	2				52
Bladen.....				6				6								1		29
Brunswick.....				15							1		5	2		1	5	57
Buncombe.....				29	1	2		2	11		2				2		5	303
Burke.....				14				1						1		3	2	62
Cabarrus.....				44	1		2	2			1	1		1		2	8	268
Caldwell.....				9	1												5	39
Camden.....				1					1		1						2	11
Carteret.....								1	3					1		1	1	29
Caswell.....				43										3			1	106
Catawba.....									2		1						5	50
Chatham.....	1			1	1				1				4				3	36
Cherokee.....				51										1			5	139

[illegible]



STATEMENT B—Continued

Counties	Official Misconduct	Perjury	Poisoning	Prohibition Laws— Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws— Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Johnston.....			1	12					5		2			1			1	85
Jones.....				18										1		1	1	78
Lee.....				2					2					1		1		34
Lenoir.....		1		11	1				5		1		9			8	1	136
Lincoln.....				11				2										63
Macon.....				28				2			1					3	1	117
Madison.....		3		10		1		1								1	1	53
Martin.....				7				1						1				74
McDowell.....		2		24					1							1		79
Mecklenburg.....				178	1			7	22		1		103	6	6	9	28	873
Mitchell.....				40	1						1	1		1		6		141
Montgomery.....	4		10	10	2		1		12			1						118
Moore.....				2								2					2	78
Nash.....				31					1		4			1		3	6	177
New Hanover.....		1		13		1		2	15			1	20	1	2	1	6	212
Northampton.....			25				1	2			2					3	1	101
Onslow.....			36		8		1	2	2				2	2		3	1	166
Orange.....			32		7							1				4	4	163
Pamlico.....													5				1	16
Pasquotank.....				4	2								3	1		1	2	58

Pender	1	1	6	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Perquimans	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Person	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Pitt	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Polk	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Randolph	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Richmond	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Robeson	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Rockingham	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Rowan	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Rutherford	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Sampson	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Scotland	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Stanly	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Stokes	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Surry	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Swain	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Transylvania	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Tyrrell	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Union	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Vance	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Wake	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Warren	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Washington	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Watauga	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Wayne	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Wilkes	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Wilson	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Yadkin	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Yancey	1	6	10	6	71	28	65	58	29	25	17	91	31	62	75	37	4	13	15	134	2	3	1	1	3	2	1	20	78	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
Totals	13	38	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																							</

Totals-----	13	38	10	2,881	78	20	27	88	271	6	75	21	409	137	36	202	362	13,983
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## STATEMENT A-1

THE FOLLOWING STATEMENT SHOWS CRIMINAL CASES DISPOSED OF IN COURTS BELOW THE  
SUPERIOR COURT, REPORTING TO THIS DEPARTMENT, DURING  
THE FALL TERM, 1932, SPRING TERM, 1933

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alexander.....	72	9	-----	81	-----	58	15	8	-----	81
Bertie.....	45	95	-----	135	5	127	12	1	-----	140
Brunswick.....	84	77	-----	156	5	80	40	41	-----	161
Buncombe.....	286	47	-----	306	27	272	57	4	-----	333
Cabarrus.....	409	94	-----	482	21	494	9	-----	-----	503
Caldwell.....	360	94	-----	432	22	304	96	54	-----	454
Chatham.....	89	130	-----	210	9	173	46	-----	-----	219
Chowan.....	35	41	-----	68	8	57	18	1	-----	76
Columbus.....	410	254	2	635	31	423	142	94	7	666
Craven.....	103	204	-----	273	34	241	55	11	-----	307
Cumberland...*	485	435	-----	847	73	623	226	72	1	922
Davidson.....	479	127	-----	563	43	520	77	9	-----	606
Duplin.....	116	128	-----	232	12	136	38	70	-----	244
Franklin.....	60	90	-----	139	11	113	36	1	-----	150
Gaston.....	980	319	-----	1,155	144	1,126	75	98	-----	1,299
Gates.....	52	65	-----	115	2	94	17	6	-----	117
Halifax.....	262	341	1	556	48	457	105	41	1	604
Harnett.....	457	308	-----	712	53	576	126	61	2	765
Haywood.....	184	34	-----	193	25	207	9	1	1	218
Henderson.....	273	68	-----	311	30	197	94	50	-----	341
Iredell.....	23	21	-----	41	3	44	-----	-----	-----	44
Lee.....	22	28	-----	49	1	50	-----	-----	-----	50
Lincoln.....	117	33	-----	142	8	108	32	10	-----	150
Madison.....	188	7	-----	181	14	131	52	6	6	195
McDowell.....	310	37	-----	309	38	286	29	32	-----	347
Mecklenburg...	2,313	1,416	-----	3,228	501	3,356	295	77	1	3,729
Moore.....	253	332	-----	539	46	472	57	56	-----	585
Nash.....	149	197	-----	324	22	232	88	26	-----	346
Orange.....	128	148	-----	265	11	217	32	27	-----	276
Pamlico.....	29	37	-----	66	-----	57	9	-----	-----	66
Person.....	82	113	1	188	8	148	34	14	-----	196
Polk.....	98	37	-----	124	11	135	-----	-----	-----	135
Richmond.....	247	174	-----	389	32	285	72	63	1	421
Rockingham...	341	329	-----	602	68	556	100	13	1	670
Surry.....	424	53	-----	451	26	401	42	33	1	477
Tyrrell.....	14	10	-----	24	-----	18	4	2	-----	24
Union.....	466	369	-----	768	67	630	121	84	-----	835
Vance.....	263	150	-----	378	35	344	67	2	-----	413
Wake.....	198	194	-----	377	15	280	79	33	-----	392
Washington...	34	90	-----	115	9	83	33	7	1	124
Wilson.....	174	228	1	370	33	225	89	89	-----	403
Total.....*	11,114	6,963	5	16,531	1,551	14,336	2,528	1,197	23	18,084

\* 2 Corporations.









[illegible]

STATEMENT B-1—Continued

Countries	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws— Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Alamance.....																	
Alexander.....		4												1	1		
Alleghany.....																	
Anson.....																	
Ashe.....																	
Avery.....																	
Beaufort.....																	
Bertie.....		8							4			1			1		1
Bladen.....																	
Brunswick.....		1													1		
Buncombe.....	2	6					4	1	7		3	3		2	4		1
Burke.....																	
Cabarrus.....		16													6		2
Caldwell.....	1	11				1	1	2	1		1	3		2	10		1
Camden.....																	
Carteret.....																	
Caswell.....																	
Catawba.....																	
Chatham.....		3															
Cherokee.....									1			3		1			3



[illegible]







STATEMENT B-1—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Alamance.....																		
Alexander.....								9				2						
Alleghany.....																		
Anson.....																		
Ashe.....																		
Avery.....																		
Beaufort.....																		
Bertie.....					3			40				3	1					
Bladen.....							12	27				13				2		
Brunswick.....																		
Buncombe.....		10	1				3	51	4	1		23						
Burke.....																		
Cabarrus.....		2	16					16		1		34						
Caldwell.....	1	6					6	45				20	1			9		
Camden.....																		
Carteret.....																		
Caswell.....																		
Catawba.....																		
Chatham.....		1						29		1						1		
Cherokee.....												9					1	





















## STATEMENT C

THE FOLLOWING STATEMENT SHOWS THE CRIMINAL CASES DISPOSED OF IN THE SUPERIOR COURTS DURING THE FALL TERM, 1933, AND SPRING TERM, 1934

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alamance.....	58	28	-----	83	3	75	4	7	-----	86
Alexander.....	64	9	-----	70	3	51	11	11	-----	73
Alleghany.....	45	9	-----	54	-----	45	7	2	-----	54
Anson.....	6	16	-----	21	1	16	5	1	-----	22
Ashe.....	105	1	-----	103	3	97	9	-----	-----	106
Avery.....	161	4	-----	149	16	93	24	47	1	165
Beaufort.....	148	78	-----	217	9	79	27	119	1	226
Bertie.....	26	6	-----	31	1	25	4	3	-----	32
Bladen.....	34	21	-----	54	1	25	11	19	-----	55
Brunswick.....	51	16	-----	62	5	39	19	8	1	67
Buncombe.....	277	175	-----	397	55	383	63	6	-----	452
Burke.....	150	24	-----	169	5	161	10	3	-----	174
Cabarrus.....	201	92	-----	283	10	186	49	58	-----	293
Caldwell.....	48	11	-----	55	4	48	10	1	-----	59
Camden.....	2	-----	-----	2	-----	2	-----	-----	-----	2
Carteret.....	15	9	-----	24	-----	24	-----	-----	-----	24
Caswell.....	62	48	-----	107	3	85	14	11	-----	110
Catawba.....	64	18	-----	76	6	69	6	7	-----	82
Chatham.....	24	16	-----	38	2	38	2	-----	-----	40
Cherokee.....	137	16	-----	140	13	131	22	-----	-----	153
Chowan.....	2	7	-----	9	-----	6	3	-----	-----	9
Clay.....	39	8	-----	46	1	38	-----	9	-----	47
Cleveland.....	89	54	-----	132	11	98	22	23	-----	143
Columbus.....	141	83	4	214	14	152	43	31	2	228
Craven.....	55	65	-----	117	3	73	26	18	3	120
Cumberland.....	56	85	4	135	10	83	22	40	-----	145
Currituck.....	11	11	-----	20	2	12	5	4	1	22
Dare.....	3	1	-----	4	-----	3	1	-----	-----	4
Davidson.....	176	37	-----	208	5	172	26	15	-----	213
Davie.....	54	33	-----	85	2	62	10	15	-----	87
Duplin.....	52	70	-----	117	5	92	17	13	-----	122
Durham.....	125	169	-----	259	35	204	58	32	-----	294
Edgecombe.....	56	91	-----	140	7	81	29	37	-----	147
Forsyth.....	434	446	-----	777	103	711	168	1	-----	880
Franklin.....	17	15	-----	32	-----	15	11	6	-----	32
Gaston.....	304	101	-----	397	8	220	71	111	3	405
Gates.....	1	1	-----	2	-----	1	-----	1	-----	2
Graham.....	94	-----	1	91	4	50	5	39	1	95
Granville.....	56	136	-----	184	8	136	30	26	-----	192
Greene.....	38	40	-----	77	1	49	17	12	-----	78
Guilford.....	311	205	-----	476	40	368	73	73	2	516
Halifax.....	44	48	-----	87	5	68	13	10	1	92
Harnett.....	165	74	-----	231	8	119	32	88	-----	239
Haywood.....	179	24	-----	191	12	107	20	74	2	203
Henderson.....	77	19	-----	83	13	74	10	12	-----	96
Hertford.....	38	95	-----	129	4	112	18	3	-----	133
Hoke.....	36	33	-----	66	3	59	2	8	-----	69
Hyde.....	3	24	-----	27	-----	16	8	2	1	27
Iredell.....	63	46	-----	104	5	86	1	22	-----	109
Jackson.....	108	11	4	121	2	78	9	36	-----	123
Johnston.....	73	50	-----	119	4	122	-----	-----	1	123
Jones.....	24	50	-----	67	-----	49	14	11	-----	74



## STATEMENT C—Continued

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Lee.....	13	27		40		32	5	3		40
Lenoir.....	53	64		115	2	85	23	9		117
Lincoln.....	44	12		56		33	10	13		56
Macon.....	99	11		107	3	61	14	34	1	110
Madison.....	43	3		43	3	31	13		2	46
Martin.....	27	37		60	4	47	9	8		64
McDowell.....	45	6		48	3	29	5	16	1	51
Mecklenburg.....	417	365		693	89	497	132	144	9	782
Mitchell.....	128	1		124	5	72	9	48		129
Montgomery.....	62	27		84	5	22	27	37	3	89
Moore.....	37	42		72	7	53	12	13	1	79
Nash.....	80	78		154	4	81	30	46	1	158
New Hanover.....	47	79		115	11	98	28			126
Northampton.....	49	139		185	3	128	20	40		188
Onslow.....	86	62		145	3	89	18	40	1	148
Orange.....	52	36		83	5	68	8	12		88
Pamlico.....	18	6		24		14	5		5	24
Pasquotank.....	30	36		65	1	42	17	7		66
Pender.....	26	16		41	1	34	5	3		42
Perquimans.....	3	20		18	5	17	3	3		23
Person.....	10	12		22		13	5	4		22
Pitt.....	63	70		129	4	101	21	11		133
Polk.....	54	18		70	2	63	9			72
Randolph.....	141	49		181	9	102	31	56	1	190
Richmond.....	61	64		120	5	97	17	10	1	125
Robeson.....	141	95	76	298	14	177	29	102	4	312
Rockingham.....	98	47		141	4	85	41	19		145
Rowan.....	74	27		91	10	41	23	35	2	101
Rutherford.....	79	27		97	9	92	14			106
Sampson.....	32	39	2	69	4	55	16	1	1	73
Scotland.....	21	2	2	25		23	2			25
Stanly.....	30	17		44	3	41	3	3		47
Stokes.....	147	32		170	9	97	14	68		179
Surry.....	128	13		135	6	120	15	6		141
Swain.....	113	9	15	132	5	95	14	28		137
Transylvania.....	115	11		123	3	74	10	42		126
Tyrrell.....	23	5		27	1	21	6		1	28
Union.....	35	45		80		58	6	16		80
Vance.....	53	35		87	1	74	9	5		88
Wake.....	252	305		495	62	398	63	96		557
Warren.....	24	38		59	3	42	17	3		62
Washington.....	9	16		24	1	11	10	4		25
Watauga.....	26	1		25	2	27				27
Wayne.....	81	91		165	7	81	34	53	4	172
Wilkes.....	488	33		476	45	184	56	268	13	521
Wilson.....	160	208		336	32	180	50	138		368
Yadkin.....	159	28		177	10	116	25	46		187
Yancey.....	139	2	1	140	2	66	26	50		142
Totals.....	8,717	5,135	109	13,092	869	9,255	2,020	2,615	71	13,961



[illegible]



STATEMENT D—Continued

Counties	Abandonment	Abduction	Abortion	Affray	Arson	Assault and Battery	Assault on Female	A. D. W.	Assault with Intent to Kill	Assault with Intent to Rape	Banking Laws—Violation	Bigamy	Breaking and Entering	Bribery	Burgery	Burglary—First Degree	Burglary—Second Degree
Johnston.....	1					6	3	12		1		2					
Jones.....						2		17					6				
Lee.....		1				5				1			10				
Lenoir.....	4						1	6		1			9				7
Lincoln.....	1					1	1	2	1	3			18				
Macon.....							1	9					10				1
Madison.....							3	9									
Martin.....	3					1		8									
McDowell.....				1			3	7				3	3		1		
Mecklenburg.....	9	2	1	2	2	25	8	67	13	1			6		5		2
Mitchell.....	3			2		4	3	13					3				
Montgomery.....	1					7		15									
Moore.....	1					1		8				1	18		1		
Nash.....	1			1		3	1	8		6		1	3				1
New Hanover.....				3	2	2	2	15									3
Northampton.....	1			17		3	2	33	4				13				
Onslow.....	5						3	25	3				3				
Orange.....								9	2				1				
Pamlico.....								1									
Pasquotank.....						1		5		1	6						

	1	1	1	1	2	7	2	19	42	797	8	27	1	54
Pender.....	1					2								
Perquimans.....	1				2	3								
Person.....	1			1		1				1				
Pitt.....	1			1		14				2				
Polk.....	1			3	1	4	2			10				
Randolph.....	3					20				5				
Richmond.....		1			7	23				10				2
Robeson.....	5	1			8	42	1			28		1		
Rockingham.....	1				14	22	1		2	15				1
Rowan.....	4	1			3	3	3			7				1
Rutherford.....	4				1	8				17				
Sampson.....		1			2	6				5				
Scotland.....					3	9	1			4				
Stanly.....					1	7			1	14				
Stokes.....	1			3	2	31	1	9		4				
Surry.....					3	15				1				
Swain.....	1			1	8	12			1	2				1
Transylvania.....	3			13	3	8	1			33				
Tyrrell.....	1			10	6	4								
Union.....		1			2	6								
Vance.....	2				2	14	2			14				
Wake.....	5	2			7	43	4	1	2	7		1		5
Warren.....		1			18	5	1		3	3				
Washington.....					2	4				3				
Watauga.....					4	4								
Wayne.....	2				2	5								
Wilkes.....	9	6				11	1		1	7		1		2
Wilson.....	1	1		9	36	73	7			8				
Yadkin.....	3			2	1	30	1			6				2
Yancey.....	5			1	8	26				4				
Totals.....	173	33	19	152	26	1,505	78	19	42	797	8	27	1	54

STATEMENT D—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Alamance.....											1	1					
Alexander.....		4					1										
Alleghany.....		1									1	1					
Anson.....									3			3					
Ashie.....		7															9
Avery.....		6			2		3	2	1	1	8			1	2		1
Beaufort.....		4					1	4			3			4			4
Bertie.....		1												1	2		
Bladen.....		3									1				2		1
Brunswick.....		1					4		3		2						4
Buncombe.....	1	4			1				2		6	1		2			
Burke.....		2										1					
Cabarrus.....		6						1	7		1	4		1		4	1
Caldwell.....		1															2
Canden.....																	
Carteret.....																	
Caswell.....		2							2			1					
Catawba.....	2	1				1						1		1			1
Chatham.....														1			
Cherokee.....	1	4					4		5								5





STATEMENT D—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespass
Johnston.....	3								8								
Jones.....		1			1							2		1			
Lee.....											3			1			
Lenoir.....		2															2
Lincoln.....		1			4												
Macon.....		3			1			2	6			1					
Madison.....		1							1								
Martin.....																	
McDowell.....											8			2	1		2
Mecklenburg.....		17					3							2			1
Mitchell.....		5			4		1				4			1			3
Montgomery.....		1						2									7
Moore.....		3													3	2	
Nash.....		2												7	1		1
New Hanover.....		2			7						2				1		1
Northampton.....		6							9		1	2					1
Onslow.....		8						2	4		1			1	14		5
Orange.....		3				1	1								1		1
Pamlico.....	1																
Pasquotank.....		1									2						1





STATEMENT D—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Alamance.....	1				27			30				1			1			
Alexander.....								5				8			2			
Alleghany.....	2							7							1	1		
Anson.....	1							10							4			
Ashe.....	2				9	1	3	16			3				2		1	
Avery.....	1	6	2					13			2						1	
Beaufort.....	1	2	1			1		42			2		1		6	2		
Bertie.....					1			4			1	2			2			
Bladen.....	2						1	8			1	1			1			
Brunswick.....		2			2	1		12			1						1	
Buncombe.....	11	2		1	43		1	94	1		2	5			10	5		
Burke.....	2	1					3	16				8		1	2	2		
Cabarrus.....	4		2					57				8			12		4	
Caldwell.....		1						9			2	1						
Camden.....															2			
Carteret.....			4					3							2	1		
Caswell.....	1				3			9			1	10						
Catawba.....								21			1	1			3	2		
Chatham.....					3	1		9			2	1			1			
Cherokee.....		2			7	2	1	17			1	5	2		2			1



STATEMENT D—Continued

Counties	Forgery	Fornication and Adultery	Gambling or Lottery	Health Laws— Violation	Housebreaking	Incest	Injury to Property	Larceny and Receiving	License, Doing Business Without	License, Practicing Profession Without	Manslaughter	Motor Vehicle Laws—Violation	Municipal Ordinances	Murder— First Degree	Murder— Second Degree	Non-support	Nuisance	Obstructing Public Highway
Johnston.....	2	6	—	—	7	1	1	34	—	—	6	4	—	—	3	—	—	—
Jones.....	—	4	1	—	—	1	—	7	—	—	2	1	—	—	2	1	—	—
Lee.....	—	—	1	—	—	—	—	7	—	—	—	—	—	—	4	—	—	—
Lenoir.....	2	—	—	—	4	1	2	30	—	—	3	11	—	—	5	2	—	—
Lincoln.....	2	—	—	—	—	—	—	6	—	—	2	1	—	—	2	—	—	—
Macon.....	—	2	4	—	1	—	—	14	—	—	—	4	—	—	4	—	—	—
Madison.....	—	2	—	—	2	—	—	3	—	—	3	2	—	—	3	—	1	—
Martin.....	—	—	—	—	12	—	—	22	—	—	2	—	—	—	3	—	—	—
McDowell.....	1	—	—	—	—	—	—	8	—	—	4	—	—	1	2	1	—	—
Mecklenburg.....	1	—	9	—	25	2	4	114	—	—	15	34	3	—	26	8	2	—
Mitchell.....	2	3	2	—	—	—	2	7	—	—	—	1	—	—	2	—	—	—
Montgomery.....	—	4	—	—	19	—	4	7	—	—	2	1	—	—	2	—	—	—
Moore.....	1	2	—	—	—	1	4	20	—	—	—	—	—	—	9	—	—	—
Nash.....	3	1	—	—	30	1	1	28	—	—	6	3	1	—	3	1	—	—
New Hanover.....	—	—	3	—	13	—	—	21	—	—	6	5	—	—	4	—	—	—
Northampton.....	—	2	—	—	—	—	—	32	—	—	—	3	—	1	2	—	2	—
Onslow.....	—	4	—	—	—	1	—	14	—	—	—	3	—	—	3	1	2	—
Orange.....	—	—	1	—	1	—	2	12	—	—	3	2	—	—	4	2	2	—
Pamlico.....	—	—	—	—	—	1	—	—	—	—	—	2	—	—	3	1	—	—
Pasquotank.....	1	2	—	—	3	—	2	20	2	—	—	—	—	—	1	2	—	—



Pender.....				4			8		1	2	1		3					
Perquimans....	1								2	2			2					
Person.....							1		2	2								
Pitt.....	2						67		1	3			6					
Polk.....				1			12			2			3					
Randolph.....	4	3					34		4	9			1		3			
Richmond.....	2					1	16		3	4	2		2	3				
Robeson.....	11	3				2	48		10	10	3	1	11	1	4			
Rockingham...				14			24		9	7			1					
Rowan.....	1					1	9			13			2					
Rutherford....	1					1	13		5		2	3						
Sampson.....							28		1			3	1	1				
Scotland.....	1						1		2				1					
Stanly.....							6			1			2	2				
Stokes.....	1	5					12		3	2			2					
Surry.....	2	4		9			15		3	2								
Swain.....	4					1	21		1	5			1	1				
Transylvania..	2	2	1			1	25			3	1		2					
Tyrrell.....				1			4											
Union.....	3						6		1	4			3					
Vance.....	4					2	9		6	3								
Wake.....	5			95		3	102		8	15			13	2				
Warren.....	1						22						3					
Washington....							6						1					
Watauga.....	1					2	8						1					
Wayne.....	3	1				2	36		4				4					
Wilkes.....	4	8	1	33		2	78			10			27	1	1			
Wilson.....			3	7			71		6	24	2		1	4				
Yadkin.....		4		3		2	17		3	1								
Yancey.....	2	1		1			19		1		1		4	1				
Totals.....	157	132	99	1	548	23	75	2,351	5	4	252	469	28	18	344	77	30	2







STATEMENT D—Continued

Counties	Official Misconduct	Perjury	Poisoning	Prohibition Laws— Violation	Prostitution	Rape	Removing Crop	Resisting Officer	Robbery	School Laws— Violation	Seduction	Slander	Storebreaking	Trespass	Vagrancy	Worthless Checks	Miscellaneous	Total as to Counties
Johnston.....				18			1	2	1		1					6	2	123
Jones.....				11								1		1		1	6	74
Lee.....				4			1				1						2	40
Lenoir.....				3			1		3				7	2			5	117
Lincoln.....				7							2			1			1	56
Macon.....				42				1			2					2	1	110
Madison.....				12										3				46
Martin.....				2					3		2		3				2	64
McDowell.....				6	1	1					1			1			4	51
Mecklenburg.....				200	5	1		9	32		1		64	8		4	40	782
Mitchell.....	1			48				1			2			7		3	2	129
Montgomery.....				8			1				1			3		1		89
Moore.....				4					1					1		1		79
Nash.....				29		1			7		1			2		2	5	158
New Hanover.....				6	2			2	13			1	3			1	3	126
Northampton.....				40		1		4	1								6	188
Onslow.....				35									4			2	1	148
Orange.....				35	2												3	88
Pamlico.....				1												1	1	24
Pasquotank.....				2			1	1	1		1		15	1		1	1	66

Pender.....	3	7	1	4	1	1	1	23
Perquimans.....	7	6	1	7	5	1	2	23
Person.....	6	13	1	7	3	1	1	22
Pitt.....	22	22	1	1			2	133
Polk.....							1	72
Randolph.....	65	25		2	5		2	190
Richmond.....	25	42	2	1	1	1	5	125
Robeson.....	3	21	1	7	3	6	7	312
Rockingham.....	1	24	1	4	1		2	145
Rowan.....	1	24	1	11	1	1	1	101
Rutherford.....	31	9		5				106
Sampson.....	9	1	3		1	5	2	73
Scotland.....	1	7	1	1			1	25
Stanly.....	7	60	1	4	2			47
Stokes.....	60	70	1	2			4	179
Surry.....	70	52		2				141
Swain.....	52	26		2	1		3	137
Transylvania.....	26	5			2	2	6	126
Tyrrell.....	5	10					8	28
Union.....	10			2	1		5	80
Vance.....	5					1	2	88
Wake.....	119			8		1		557
Warren.....	1			19		2	17	62
Washington.....	2			6	2	3	62	25
Watauga.....	5			1	1	1	3	27
Wayne.....	5	82	1	10	2		1	172
Wilkes.....	5	92	2	4	6	1	9	521
Wilson.....	2	89	4	2		5	2	368
Yadkin.....		44		3	1	2	1	187
Yancey.....	1			2		3	2	142
Totals.....	4	35	32	90	86	298	113	13,961





## STATEMENT C-1

THE FOLLOWING STATEMENT SHOWS CRIMINAL CASES DISPOSED OF IN COURTS BELOW THE  
SUPERIOR COURTS, REPORTING TO THIS DEPARTMENT, DURING THE FALL TERM,  
1933, SPRING TERM, 1934

Counties	White	Colored	Indian	Male	Female	Convicted	Acquitted	Nolle Pros.	Otherwise Disposed of	Total
Alexander.....	27	5		32		26	5	1		32
Bertie.....	46	110		153	3	141	13	2		156
Brunswick.....	70	56		118	8	81	23	22		126
Buncombe.....	303	95		354	44	337	59	2		398
Cabarrus.....	580	122		680	22	700	2			702
Caldwell.....	374	70		413	31	354	69	21		444
Chatham.....	124	155		271	8	244	35			279
Chowan.....	23	41		60	4	50	14			64
Columbus.....	351	246	2	558	41	376	169	53	1	599
Craven.....	115	191		279	27	230	60	16		306
Cumberland.....	472	637		996	113	773	241	85		1,109
Davidson.....	90	31		112	9	110	9	2		121
Duplin.....	123	125		230	18	160	34	52	2	248
Franklin.....	61	79		133	7	113	26	1		140
Gaston.....	1,869	472		2,179	162	2,122	106	113		2,341
Gates.....	25	58	1	82	2	72	9	3		84
Granville.....	13	29		41	1	41	1			42
Halifax.....	250	340		553	37	476	82	32		590
Harnett*.....	611	508	8	1,038	89	885	155	88		1,128
Haywood.....	133	30		152	11	163				163
Henderson.....	275	72		307	40	198	103	46		347
Iredell.....	96	32		120	8	128				128
Lee.....	72	70		140	2	140	1	1		142
Lincoln.....	225	46		261	10	226	38	7		271
Madison.....	150	9		151	8	135	22	2		159
McDowell.....	252	36		258	30	228	35	25		288
Mecklenburg.....	3,291	2,049		4,707	633	4,465	599	276		5,340
Moore.....	241	241		447	35	411	39	28	4	482
Nash.....	169	154	2	307	18	223	62	40		325
Orange.....	112	187		278	21	241	30	26	2	299
Pamlico.....	16	33		49		43	6			49
Person.....	129	94	1	218	6	200	19	5		224
Richmond.....	273	162		410	25	318	76	41		435
Rockingham.....	445	405		733	117	729	90	27	4	850
Surry.....	622	61		639	44	594	38	51		683
Tyrrell.....	23	12		35		27	6	2		35
Union.....	470	401		817	54	696	95	79	1	871
Vance.....	363	198		530	31	505	47	9		561
Wake.....	347	234		564	17	448	89	44		581
Washington.....	45	112		147	10	110	41	6		157
Wilson.....	641	919		1,402	158	1,162	280	115	3	1,560
Total.....	13,917	8,927	14	20,954	1,904	18,681	2,828	1,333	17	22,859

\* 1 Corporation.

















STATEMENT D-1—Continued

Counties	Burning other than Arson	C. C. W.	Compounding Felony	Concealing Birth of Child	Conspiracy	Cruelty to Animals	Disorderly House	Disposing Mortgaged Property	Disturbing Meetings	Election Laws—Violation	Embezzlement	Escape	Failure to List Taxes	False Pretense	Fish and Game Laws—Violation	Food and Drug Laws—Violation	Forcible Trespasses
Johnston.....																	
Jones.....																	
Lee.....	4							1				6					
Lenoir.....																	
Lincoln.....	7				5				1			1					
Macon.....																	
Madison.....	9							2	4			3		2			
Martin.....																	
McDowell.....	1	8					5		6		1						
Mecklenburg.....		99				2	4	1	7			3		4	1	1	7
Mitchell.....																	
Montgomery.....																	
Moore.....	9					1	3		9			9		2	3		
Nash.....	9					2		1	2				1				1
New Hanover.....																	
Northampton.....																	
Onslow.....																	
Orange.....	4							2	2								1
Pamlico.....																	
Pasquotank.....	2													2			







[illegible]









[illegible]





[illegible]

## STATEMENT E

Comparative Statement as to Sex, Race, Judgment, etc.	Superior Court		Courts Below Superior Court	
	From July 1, 1932 To July 1, 1933	From July 1, 1933 To July 1, 1934	From July 1, 1932 To July 1, 1933	From July 1, 1933 To July 1, 1934
Males.....	13,153	13,092	16,531	20,954
Females.....	828	869	1,551	1,904
Corporations.....	2		2	1
Total.....	13,983	13,961	18,084	22,859
White.....	8,749	8,717	11,114	13,917
Colored.....	5,062	5,135	6,963	8,927
Indian.....	170	109	5	14
Corporations.....	2		2	1
Total.....	13,983	13,961	18,084	22,859
Convictions, Including Submissions.....	9,217	9,255	14,336	18,681
Acquittals.....	1,982	2,020	2,528	2,828
Nolle Pros.....	2,716	2,615	1,197	1,333
Otherwise Disposed of.....	68	71	23	17
Total.....	13,983	13,961	18,084	22,859



## STATEMENT F

Alphabetical List of Crimes	Superior Court		Courts Below Superior Court	
	From July 1, 1932 To July 1, 1933	From July 1, 1933 To July 1, 1934	From July 1, 1932 To July 1, 1933	From July 1, 1933 To July 1, 1934
Abandonment.....	157	173	171	129
Abduction.....	17	33	3	3
Abortion.....	16	19		3
Affray.....	115	152	261	299
Arson.....	43	26	2	2
Assault and Battery.....	394	446	1,216	1,462
Assault on Female.....	198	216	299	371
A. D. W.....	1,283	1,505	1,473	1,762
Assault with Intent to Kill.....	127	126	5	15
Assault with Intent to Rape.....	74	78	1	7
Banking Laws—Violation.....	17	19		
Bigamy.....	30	42		4
Breaking and Entering.....	909	797	71	49
Bribery.....	4	8	1	
Buggery.....	16	27	3	1
Burglary—First Degree.....		1		
Burglary—Second Degree.....	47	54	3	3
Burning other than Arson.....	42	33	9	12
C. C. W.....	249	269	433	508
Compounding Felony.....				
Concealing Birth of Child.....	10	2		
Conspiracy.....	48	43		10
Cruelty to Animals.....	11	18	20	17
Disorderly House.....	40	46	41	47
Disposing Mortgaged Property.....	42	29	40	29
Disturbing Meetings.....	78	94	122	114
Election Laws—Violation.....	9	2		
Embezzlement.....	148	124	20	14
Escape.....	52	52	70	67
Failure to List Taxes.....	8		10	6
False Pretense.....	128	126	36	41
Fish and Game Laws—Violation.....	53	75	119	66
Food and Drug Laws—Violation.....	4	10	9	2
Forcible Trespass.....	141	129	63	80
Forgery.....	172	157	6	19
Fornication and Adultery.....	136	132	202	197
Gambling or Lottery.....	71	99	313	719
Health Laws—Violation.....	3	1	15	15
Housebreaking.....	603	548	18	20
Incest.....	16	23		
Injury to Property.....	87	75	131	109
Larceny and Receiving.....	2,481	2,351	2,288	1,963
License, Doing Business Without.....	9	5	11	45
License, Practicing Profession With- out.....	6	4	4	4
Manslaughter.....	187	252	1	10
Motor Vehicle Laws—Violation.....	582	469	1,329	1,518
Municipal Ordinances.....	39	28	348	609
Murder—First Degree.....	12	18		
Murder—Second Degree.....	311	344	6	5
Non-Support.....	55	77	81	124
Nuisance.....	26	30	62	93

## STATEMENT F—Continued

Alphabetical List of Crimes	Superior Court		Courts Below Superior Court	
	From July 1, 1932 To July 1, 1933	From July 1, 1933 To July 1, 1934	From July 1, 1932 To July 1, 1933	From July 1, 1933 To July 1, 1934
Obstructing Public Highway.....	3	2	1	3
Official Misconduct.....	13	4	-----	-----
Perjury.....	38	35	5	6
Poisoning.....	10	-----	2	-----
Prohibition Laws—Violation.....	2,881	2,957	7,095	10,409
Prostitution.....	78	66	101	70
Rape.....	20	32	2	6
Removing Crop.....	27	22	48	22
Resisting Officer.....	88	90	78	122
Robbery.....	271	312	17	27
School Laws—Violation.....	6	9	8	2
Seduction.....	75	86	15	10
Slander.....	21	14	18	31
Storebreaking.....	409	298	25	8
Trespass.....	137	132	341	323
Vagrancy.....	36	29	45	54
Worthless Checks.....	202	113	252	120
Miscellaneous.....	362	373	715	1,073
Total.....	13,983	13,961	18,084	22,859

## STATEMENT G

COMPARATIVE STATEMENT OF DISPOSITION OF VIOLATIONS OF THE PROHIBITION LAW, FOR  
THE YEARS 1932-33, 1933-34

	Superior Court		Courts Below Superior Court	
	From July 1, 1932 To July 1, 1933	From July 1, 1933 To July 1, 1934	From July 1, 1932 To July 1, 1933	From July 1, 1933 To July 1, 1934
Convictions.....	2,004	2,185	6,368	9,473
Acquittals.....	341	325	510	710
Nolle Pros.....	521	429	214	224
Otherwise Disposed of.....	15	18	3	2
Total.....	2,881	2,957	7,095	10,409

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**Fees Transmitted by Attorney General to State Treasurer Since February Term, 1932, Through February Term, 1934**


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State v. Foy.....	\$ 10.00
State v. Luke Lea, Wallace Davis, et al.....	30.00
State v. Shipman.....	50.00
State v. E. Harrell.....	10.00
State v. Luke Lea.....	10.00
State v. McKeithan.....	10.00
State v. Everhardt.....	10.00
State v. Lattimore.....	10.00
State v. Bryson.....	10.00
State v. Gossett.....	10.00
State v. Call.....	10.00
State v. Ellis.....	10.00
State v. Ingram.....	10.00
State v. Shoemaker.....	10.00
State v. Dills.....	10.00
State v. Dan Harris.....	10.00
State v. Manos.....	10.00
State v. Layton.....	10.00
State v. Evans.....	10.00
State v. Clyde Fowler.....	10.00
State v. Davidson, et al.....	30.00
State v. Rowland.....	10.00
State v. Carter.....	10.00
State v. Harwood.....	10.00
State v. Shore.....	10.00
State v. Dula.....	10.00
Kent Coffey Manufacturing Co. v. Maxwell, Commissioner (U. S. Supreme Court).....	20.00
State v. Johnson.....	10.00
<b>Total.....</b>	<b>\$ 370.00</b>

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# THE WORK OF THE OFFICE

## OPINIONS

We print a few of the more important opinions of the office. The appropriation for printing the report does not permit of including a larger number in this publication.

During the two year period, the office wrote 7,123 letters. This, of course, includes not alone formal opinins, but also correspondence.

Official opinions or rulings are given to State departments, officers and agencies. In addition to that, we give advisory opinions to local officials upon request from them. We regret that the staff is not sufficient to enable us to do more of this kind of work.

## CRIMINAL CASES

Tables are included showing criminal statistics assembled by the Department. It is hoped that the law may be so amended as to make this service of greater value.

## CIVIL CASES

Exhibit I contains a list of civil cases pending or disposed of in the various courts, and also of all cases in the Supreme Court of the United States in which this office participated.

The number and importance of these cases has constantly increased. They relate to all phases of governmental services and activities; the more important of these, of course, are those dealing with taxation. As the State has extended its services, State taxation has greatly increased and, as a consequence, new problems in this field have arisen. Taxpayers are more disposed than ever to contest applicability of taxation laws to them, and especially if they find any grounds for the contention that the particular statute may be unconstitutional.

We call attention to some of the more important of these cases:

### *Atlantic Coast Line Railroad v. Maxwell, Commissioner of Revenue*

The Atlantic Coast Line Railroad Company did not include in its income tax return for the year 1931 moneys received by it from the Federal Government for railway mail pay. The Commissioner of Revenue thereupon assessed against the Railroad Company additional income tax which, with interest, amounted to \$4,403.98.

The Railroad Company paid the tax under protest and sued for its recovery, under section 510 of the Revenue Act. At the hearing in Wake Superior Court, Judge Henry A. Grady rendered judgment for the defendant, Commissioner of Revenue. The case came up to our Supreme Court and was argued at the call of the Seventh District, Fall Term, 1934, and has not been decided as this is being written.

Another case of similar nature—Winston-Salem Southbound Railroad Company v. Maxwell, Commissioner of Revenue—awaits determination of this Atlantic Coast Line Railroad case.

*Norfolk Western Railway Company v. Maxwell, Commissioner of Revenue*

This is an income tax case in which plaintiff is contending that it has no taxable net income in North Carolina. The case was heard by Judge J. Crawford Biggs, Referee, under a compulsory order of reference. It involved a study of many intricate facts and figures, making a voluminous record. Judge Biggs decided the case against the Commissioner of Revenue and an appeal was taken to the Superior Court of Wake County. Hearing was had before Judge Grady and extensive briefs submitted by plaintiff and by this Department. Judge Grady has not yet rendered his judgment.

Another case involving similar facts and contentions has been brought by this Railway Company against the Commissioner of Revenue. The amount involved in the case now pending before Judge Grady is \$86,421.71, plus interest from various dates. The amount involved in the second case is \$51,193.11 and interest from date of payment.

*Southeastern Express Company v. Maxwell, Commissioner of Revenue*

This action was brought to recover the sum of \$25,876.80, franchise privilege tax, paid by plaintiff to the Commissioner of Revenue, under section 205 of the Revenue Act of 1931. Plaintiff alleged unconstitutionality of the tax, as applied to it, under the Interstate Commerce Clause, and the Fourteenth Amendment to the Constitution of the United States, part of its contention being that the tax was confiscatory. Answer was filed by this Department. The case is still pending in the Superior Court of Wake County.

The issues involved are similar to those in *Railway Express Agency v. Maxwell, Commissioner of Revenue*, 199 N. C., 637. The facts in that case showed that the franchise-privilege tax paid by the Railway Express Agency amounted to slightly in excess of 12 per cent of its revenues derived from intrastate business, the principal contention of the plaintiff being that the tax was confiscatory. The Supreme Court of North Carolina decided the case in favor of the Commissioner of Revenue and no appeal was taken to the Supreme Court of the United States.

*Ross Federal Service v. Maxwell, Commissioner of Revenue*

This case involves validity of section 104 of the Revenue Act of 1933 levying an annual license or privilege tax of \$1,250, upon those engaged, under contract or for compensation, in the business of checking attendance or amount of admission receipts at theatres. This company paid the tax of \$1,250 under protest and sued for its recovery. It alleges that its gross receipts from the business in the State for the year 1933 was \$13,931.72 and the expenses of operation \$12,885.73. Its principal contention, then, is that the tax is confiscatory. The case is pending in the Superior Court of Wake County, and whatever the result there, will probably go to the Supreme Court of this State.



*State and Maxwell, Commissioner of Revenue, v. L. D. Melvin and Great American Indemnity Company*  
and

*State and Maxwell, Commissioner of Revenue, v. E. G. Richardson and Great American Indemnity Company*

These are similar actions brought by the State on relation of the Commissioner of Revenue against the defendants, former deputies in the Department of Revenue, involving claims against them and the defendant Great American Indemnity Company, surety on their bonds, growing out of their services as such deputies. The amount claimed in the Melvin case is \$587.45; against Richardson and his surety \$4,814.63. These cases are pending in the Superior Court of Wake County and will be tried as soon as they can be set for hearing in their order on the calendar.

*T. E. Alliosn, et al., v. C. E. Sharpe, Registrar, Hugh G. Mitchell, Chairman Board of Elections of Iredell County, L. P. McLendon, Chairman, and State Board of Elections.*

This is an action brought in Iredell Superior Court by T. E. Allison and Robert W. Dockery, alleging that they were qualified, under the Constitution and laws of this State, for registration as voters, and that the Registrar, C. R. Sharpe, had unlawfully, and in violation of the Constitutions of the United States and North Carolina, refused to register them. The action was brought July 19, 1934 and demurrer filed by this Department August 18, 1934. The demurrer has not been passed upon and the action is still pending.

*State Hospital for the Insane, at Raleigh, v. Security National Bank, Guardian for Earl N. Betts*

This case was heard at March Term, 1934, Wake Superior Court. It involves claim of the State Hospital against the estate of an ex-soldier of the World War for care and maintenance of such soldier in the State Hospital. His guardian has in hand securities purchased with funds received from the Federal Government for the benefit of said soldier. It contends that, under the Federal statutes, such funds, and the securities in which they are invested, are exempt from all debts of its ward, including the account of the State Hospital for his care and maintenance while an inmate of that institution.

Our contention is that such funds, and the securities in which they are invested, are not so exempt, but are liable for payment of this account.

Judge Grady rendered judgment in favor of the State Hospital; appeal was taken by the defendant to the Supreme Court and there argued at the call of the Seventh District, Spring Term, 1934. It was ordered for re-argument for October 30. On the re-argument, Messrs. J. D. DeRamus and J. H. Whittington, attorneys for the Veterans Administration, submitted a brief as amici curiae and we submitted supplementary brief.

The amount involved in the case is \$3,550, but we have pending other claims of like nature involving a much larger sum.

*Belk Brothers Company v. Maxwell, Commissioner of Revenue*

This action was brought in Wake Superior Court October 12, 1934, and answer filed October 24. Amount involved is \$3,620. Plaintiff, for itself



and its affiliated companies, is contesting the applicability to it of the new definition of "chain store" contained in Section 162 of the Revenue Act of 1933. The case, of course, will be determinative of that question as it applies to all other like organizations in the State.

*Thomas R. Hocutt v. Thomas J. Wilson, Jr., Dean of Admissions and Registrar, and the University of North Carolina.*

This action was brought in the Superior Court of Durham County in March, 1933, by Hocutt, a negro, against defendants, seeking a peremptory writ of mandamus commanding defendants to admit plaintiff to the School of Pharmacy of the University. Answer was filed by this Department for the defendants and hearing completed March 28, 1933 before Judge Barnhill. Defendants demurred ore tenus and moved to dismiss the complaint. Judgment was entered allowing the motion to dismiss for that the writ of mandamus was not the proper remedy.

Notice of appeal to the Supreme Court was given but the appeal was not perfected.

#### THE PARK COMMISSION

By Chapter 212, Public Laws of 1933, membership of the Park Commission was changed from eleven to five, the members to be appointed by the Governor. The act also provided that the Governor should appoint a committee of three of such members to investigate action and expenditures of the former Commission. That investigation has never been had.

Under the old Commission, the fees of attorneys for the Park Commission were paid out of funds provided by the Laura Spelman Rockefeller Memorial Foundation. With possibly a few exceptions, such fees of such attorneys, as were approved by the Attorney General, were also submitted to, and approved by, the Governor then in office. These expenditures for fees were also examined, audited and approved by representatives of the Rockefeller Foundation which supplied the money for the payment.

By Chapter 260, Public Laws of 1933, Chapter 48 of the Public Laws of 1927 was amended, providing for approval of attorneys for the Park Commission by the Governor and not by the Attorney General. Since that time the Attorney General has not been consulted about, nor had any relation to, handling of condemnation cases for the Park Commission. Just prior to that time the old Park Commission had concluded purchase of lands from the Suncrest Lumber Company containing 32,853 acres, for which \$610,454.78 was paid. Since then the new Park Commission has concluded condemnation and purchase of lands from the Ravensford Lumber Company containing 32,709 acres, paying therefor the sum of \$1,088,992.59.

At the time of the passage of the 1933 acts, this office was handling, in the Superior Court of Wake County, the case of State of North Carolina and North Carolina Park Commission v. U. S. Guarantee Company, Metropolitan Casualty Insurance Company of New York and Century Indemnity Company of Hartford. The action was brought upon the depository bonds of these several companies given to secure deposits in the Central Bank and Trust Company of Asheville. At the time of bringing the action there was a balance of \$122,716.65 of deposits of the Park Commission in the failed bank. Intricate questions of law arose in the handling of the case. It was tried

before Judge G. Vernon Cowper January, 1934, Special Term of Wake Superior Court, the judgment being for the State and the Park Commission on the main questions involved, the Court holding against their contentions with respect to an item of interest. Cross appeals were taken and the case is now in our Supreme Court.

*Northcutt v. Peoples Bonded Warehouse Company, et al.*

This case, tried in Anson Superior Court September Term, 1933, involved question of liability of the State warehouse system and its funds with respect to cotton in warehouse. On appeal, 206 N. C., 842, the contention of this Department, that funds in the hands of the State Treasurer are not liable, was sustained.

*State ex rel. Maxwell, Commissioner of Revenue, v. Reynolds Tobacco Company*

In this case the defendant Reynolds Tobacco Company asked for a revision of income tax assessed against it and refund of \$80,632.09. This company had theretofore, in payment of its income taxes to the State of North Carolina, included in its return interest paid to it by the United States Government on certain tax refunds. It claimed exemption of this interest, so paid it by the Federal Government, under Section 317.d of the Revenue Act, which excludes from the definition of gross income "interest upon the obligations of the United States."

This Department took the position that interest paid the taxpayer upon refunds by the Federal Government was not such "obligation of the United States" as came within the statute. The Commissioner of Revenue declined to make the refund. In the meantime, the case of *American Viscose Corporation v. Commissioner of Internal Revenue* was decided in the Circuit Court of Appeals for the Third Circuit, 56 Federal (2nd), 1033, construing a similar provision in the Federal Revenue Act in accordance with the contentions of the State. Petition for writ of certiorari in that case was denied by the Supreme Court of the United States October 10, 1932, 287 U. S., 615, 77 L. ed., 534. Thereupon the Reynolds Tobacco Company consented to abandon its appeal, and judgment was entered dismissing the action.

*Ashlyn L. Cannon v. Maxwell, Commissioner of Revenue, and Stedman, State Treasurer*

The sum involved in this action was only \$768.65. The Commissioner of Revenue made refund of certain taxes collected as authorized by statute, but declined to pay interest on the refund so made. Plaintiff sued for the recovery of this interest. The position of the Commissioner of Revenue and this Department was that he was not authorized to pay interest where refund was voluntarily made, but only when recovery is had by action, as set out in Section 510 of the Revenue Act, and cognate sections of preceding Revenue Acts, for the reason that the State does not pay interest unless it expressly contracts to do so.

The case was decided in favor of the Commissioner of Revenue and State Treasurer by Judge Cranmer, May Term, 1933, and, on appeal, affirmed by the Supreme Court of North Carolina, 205 N. C., 420.



*Hans Rees Sons, Inc. v. Maxwell, Commissioner of Revenue*

The plaintiff brought this action in Wake Superior Court March 8, 1934. It therein sought to recover franchise taxes paid for the years 1931, 1932 and 1933, amounting to \$5,709.10, with interest from dates of payment. In its complaint, of 27 typewritten pages, it presented all the usual contentions of alleged unconstitutionality under Interstate Commerce Clause and the Fourteenth Amendment to the Federal Constitution, alleging that the tax deprived it of its property without due process of law, imposed a tax upon its property situated outside the State of North Carolina and was a burden upon interstate commerce. Answer was filed April 5, 1934, controverting material allegations of the complaint and undertaking to show that the tax laws of North Carolina were, and are, favorable, rather than otherwise, to plaintiff as a foreign corporation.

On February 13, 1934, plaintiff took a voluntary non-suit.

*State ex rel. Attorney General v. Herman Winburn*

and

*State ex rel. Attorney General v. Harry Gorson*

In these cases the Attorney General filed motions in the Supreme Court asking that rule be served on these defendants to show cause why they should not be disbarred. In the case against Winburn the evidence showed that he had formerly practiced in Louisiana, and, upon charges filed against him, had consented to ask that his license to practice law be cancelled. He received license in this State at the Fall Term, 1928, of our Supreme Court and was later admitted to practice in the several Federal courts, including the Supreme Court of the United States. On October 9, 1933, he was disbarred from practicing in the Supreme Court of the United States, and subsequently disbarred by the District Court for the Middle District of North Carolina, and the United States Circuit Court of Appeals.

The Court referred the motion, and the answer thereto, to a committee of the Bar, and on its findings, and in the exercise of its inherent power to act in the premises, the Supreme Court of North Carolina disbarred the respondent Winburn, 206 N. C., 923.

The motion with respect to Gorson was filed in the Supreme Court of North Carolina, October 16, 1934, by the Attorney General. It is based upon information and certificates showing that the respondent Gorson had heretofore practiced in Pennsylvania and had been disbarred by the courts of that state.

*Thomas W. Elliott v. State Board of Equalization*

This case grew out of a controversy with respect to maintenance of schools in several districts in Chowan County. The case went to the Supreme Court and there, 203 N. C., 749, it was held that the State Board of Equalization did not have the power to make the consolidation and discontinue certain schools as attempted, and upheld the right of the Districts to necessary allocation of funds for the maintenance of the schools.



*Stedman, Treasurer, v. City of Winston-Salem*

In this case, 204 N. C., 203, the Supreme Court held that a city is liable for the gasoline tax. In *O'Berry v. Mecklenburg County*, 198 N. C., 357, the Court had held to the contrary. The law was amended by the General Assembly of 1931 so as to include a municipality, with the result as stated, in the Winston-Salem case.

*Maxwell, Commissioner of Revenue, v. Kent Coffey Manufacturing Company*

This case involved income tax paid under protest by defendant Kent Coffey Manufacturing Company, the amount being \$4,295.27, with interest from date of payment. While the amount involved is small, yet the case was one of great importance and attracted attention following the Hans Rees case, decided against the State by the Supreme Court of the United States, 283 U. S., 123, 75 L. ed., 879.

The case was decided against contentions of the State on the hearing before Judge McElroy, Caldwell County, May Term, 1932. Appeal was taken by the State and judgment reversed by the Supreme Court of North Carolina, with an elaborate opinion, 204 N. C., 365. The taxpayer then took the case on appeal to the Supreme Court of the United States where it was argued January 15, 1934. On January 22, 1934, that Court, 291 U. S., 642, 78 L. ed., 1040, sustained the contentions of the State and affirmed the judgment of our Supreme Court, holding that the case was controlled by the Underwood Typewriter case, 254 U. S., 114, and not by the Hans Rees case.

*Perdue v. State Board of Equalization*

The Department has handled for the various other State departments a number of compensation cases. Probably the most important is that of *Perdue v. State Board of Equalization*, which, on appeal, went to the Supreme Court, 205 N. C., 730, where it was held that a person employed by a graded school district, as teacher in athletics, was an employee of a political subdivision of the State and not of the State.

*Central Hanover Bank and Trust Company v. Norfolk Southern Railroad Company*

This is a receivership of the Norfolk Southern Railroad Company pending in the United States District Court for the Eastern District of Virginia. Controversy arose as to payment of franchise taxes due to the State of North Carolina. The taxes, amounting to \$94,603.19, were finally collected in full.

This Railroad Company holds lease of the Atlantic and North Carolina Railroad, majority of stock of which is owned by the State. Many interesting questions arise in connection with the rights of the State in this regard. This office, through Assistant Attorney General Seawell, is assisting Mr. R. A. Whitaker, attorney for the Atlantic and North Carolina Railroad, in these matters.

*Alabama v. Arizona, North Carolina et al.*

This was application by the State of Alabama for leave to file complaint in original suit in the Supreme Court of the United States against nineteen

other states, including North Carolina, to procure an adjudication of invalidity as in violation of the Commerce Clause of the Federal Constitution, of the statutes of the defendant states forbidding the sale of goods produced by convict labor. The several acts of the defendant states were passed in pursuance of the Act of Congress, passed January 19, 1929, known as the Hawes-Cooper Act. The North Carolina statute is Chapter 146, Public Laws of 1933, forbidding the sale of such convict-made goods. The Act went into effect January 19, 1934 in pursuance of the Hawes-Cooper Act.

This Department, for the State, filed its return to the notice to show cause why the application of Alabama for leave to sue should not be granted. And the Department also filed brief in support of its contentions.

When the case came on to be heard in the Supreme Court of the United States January 9, 1934, Alabama obtained leave to, and on a later date did, submit an amendment eliminating fourteen of the states, including North Carolina, from its petition. That disposed of the case so far as North Carolina was concerned.

However, Alabama proceeded with its application against Arizona, Idaho, Montana, New York and Pennsylvania. The Supreme Court handed down its opinion February 5, 1934, denying leave to bring the suit as against these other five states, 291 U. S., 286, 78 L. ed., 798.

The constitutionality of our act forbidding the sale of prison-made goods was not directly passed upon in that opinion. But no further action has been taken by Alabama or the purchasers of its convict-made goods. It may be reasonably assumed that the case disposes of the effort to declare the act unconstitutional.

#### *State v. Wallace B. Davis*

This defendant was convicted at April Special Term, 1931, Superior Court of Buncombe County, of publishing false reports with respect to financial condition of the Central Bank and Trust Company. On appeal to the Supreme Court of North Carolina no error was found and the judgment was affirmed, 203 N. C., 47. The defendant's motion in Superior Court of Buncombe County for new trial having been denied, the Supreme Court granted motion of this Department to Docket and dismiss his appeal, 203 N. C., 327.

The defendant then filed petition for writ of certiorari in the Supreme Court of the United States. This office submitted brief in opposition to the petition. The petition was denied October 17, 1932, 287 U. S., 645, 77 L. ed., 558.

#### *The Luke Lea Case*

At the July-August Special Term, 1931, of the Superior Court of Buncombe County, Luke Lea, Luke Lea, Jr., and Wallace B. Davis were tried and convicted of a conspiracy to misapply the funds of the Central Bank and Trust Company and misapplication of such funds. On appeal to the Supreme Court of North Carolina, the argument was presented for the State both orally and by brief by this Department, and the judgment affirmed June 15, 1932, 203 N. C., 13. The defendants then filed petition asking our Supreme Court to review the record and reconsider the opinion so filed. This petition was denied June 29, 1932, 203 N. C., 35.

The defendants then filed petition in the Supreme Court of the United States for writ of certiorari, seeking to review the action of the Supreme



Court of North Carolina, upon the contention that, in their trial, they had been denied due process of law guaranteed by the Federal Constitution. Defendants, through their counsel, filed an elaborate brief in support of their petition. This Department, on October 8, 1932, submitted brief in opposition to the petition. The petition for writ of certiorari was denied by the Supreme Court of the United States October 24, 1932, 287 U. S., 649, 77 L. ed., 561.

In the meantime, the defendants applied to the Judge holding the Superior Court of Buncombe County for a stay of execution, pending the application made at July Term, 1932, Buncombe Superior Court, for a new trial, on the grounds of newly discovered evidence and for alleged jury attainr or alleged disqualifications and misconduct of the jury before whom they were tried. The motion for a new trial was denied and defendants gave notice of appeal therefrom to the Supreme Court.

This Department, assisted by Solicitor Nettles of the Nineteenth District, thereupon had the record in this motion for a new trial certified to the Supreme Court of North Carolina, and, on October 4, 1932, made motion to docket and dismiss the appeal as being frivolous and for the purpose of delay, under Supreme Court Rule 17.1, 192 N. C., 845. On October 19, 1932, the North Carolina Supreme Court allowed the motion to docket and dismiss, 203 N. C., 316. Thereupon, on October 27, 1932, Wallace Davis entered the State's Prison. The defendants, Luke Lea and Luke Lea, Jr., thereupon filed with the Supreme Court of the United States petition for writs of certiorari, both to the Supreme Court of North Carolina and the Superior Court of Buncombe County, seeking to have reviewed both the record in the original trial and in the motion for a new trial. Their counsel supported their petition with brief, and brief in opposition was filed by this Department November 9, 1932. On November 19, 1932, the Supreme Court of the United States denied this second petition for writ of certiorari, 287 U. S., 668, 78 L. ed., 576.

These defendants, Luke Lea and Luke Lea, Jr., were in Tennessee, of which state they were residents, during these various proceedings in the Supreme Court of North Carolina and the Supreme Court of the United States. Extradition was sought, and on February 7, 1933 Governor Hill McAlister of Tennessee, after full hearing and argument, this Department being represented by Assistant Attorney General Seawell, honored the request of Governor Ehringhaus for the rendition of the Leas as fugitives from justice.

On March 14, 1933, the Leas were arrested at Clarksville, Montgomery County, Tennessee, and sued out writ of habeas corpus, which was heard by Judge John T. Cunningham of the Criminal Court of that county.

On April 11, 1933, Judge Cunningham delivered a written opinion sustaining the demurrer of the North Carolina officers, dismissed the petition, quashed the writ, and remanded the Leas to custody. They thereupon took an appeal to the Supreme Court of Tennessee and were allowed bail in the sum of \$15,000 each. On June 25, 1933, the appeal was argued in the Supreme Court of Tennessee at Nashville. Its opinion was handed down December 9, 1933, at the next sitting of the Court at Nashville, every point raised being decided in favor of the contentions of the State of North Carolina and its officers.

The Leas then filed petition for writ of certiorari in the Supreme Court of the United States, thereby seeking to have the action of the Tennessee Courts reviewed. Under the Federal statute, they had three months in which



to file the petition. Justice Brandeis extended the time twenty days. The defendants, through their counsel, submitted brief in support of their petition, and this office submitted brief in opposition. The petition was denied by the Supreme Court of the United States April 30, 1934, 292 U. S., 638, 78 L. ed., 1491.

Thereupon, the mandate from the Supreme Court of the United States was sent down to the Supreme Court of Tennessee, and the defendants, Luke Lea and Luke Lea, Jr., were arrested and delivered into the custody of the North Carolina agents, Sheriff Laurence E. Brown and Deputy Sheriff Frank Lakey, of Buncombe County. They entered the North Carolina State Prison May 10, 1934.

It will be seen that a considerable period of time elapsed between the conviction of these defendants and their incarceration in the State's Prison. That was due principally to the necessity of extraditing them from Tennessee. However, the procedure was in accordance with that established by the Constitution and laws of the United States, and of the States of North Carolina and Tennessee, with respect to such matters. Honorable A. H. Roberts, ex-governor of Tennessee, was employed as special counsel to aid this Department in that state. He and his firm rendered this State a very fine service, not only with respect to the legal problems involved, but also in the successful handling of the case in its practical aspects. Assistant Attorney General Seawell was in special charge of the case for this Department in the arguments before the Governor of Tennessee, the Criminal Court of Montgomery County, and in the Supreme Court of that state, and in the preparation of all the briefs. And his work measured up to that high standard of ability and fidelity as lawyer and member of this Department for which he has such a distinguished reputation.

As to the time element, comparison may be made with another important case arising at the same time. At the August Special Criminal Term, 1931, of Transylvania County, T. H. Shipman, J. H. Pickelsimer, T. R. McNeely, and Ralph Fisher were convicted of conspiracy and misapplication under the banking laws, and sentenced to the State's Prison. On appeal to our Supreme Court, no error was found and the convictions were sustained April 6, 1932, 202 N. C., 518. They thereupon sought a new trial on the ground of newly discovered evidence and alleged misconduct of jurors. Application was denied in the Court below; this Department thereupon made motion to docket and dismiss the appeal, and the case was, by the Supreme Court, on October 19, 1932, remanded to the Superior Court of Transylvania County for new sentence on account of an error in the former sentence, 203 N. C., 325.

At the December Term, 1932, Transylvania Superior Court, final sentence was imposed upon the defendants. The case was not taken to the Supreme Court of the United States.

These defendants, Shipman, Pickelsimer, McNeely and Fisher, were incarcerated in the State's Prison March 11, 1934.

It will thus be seen that the defendants in both cases were convicted in the same month. The Leas reached the State's Prison May 10, 1934; Shipman and his co-defendants reached the Prison March 11, 1934. Incarceration of the Leas entailed extradition from Tennessee upon their resistance, upon writ of habeas corpus, through the courts of Tennessee, and up to the Supreme Court of the United States; the defendants, Shipman, Pickelsimer,

McNeely and Fisher were in North Carolina during the fifteen months period from their final sentence in the Superior Court of Transylvania County in December, 1932, to their incarceration in State's Prison March 11, 1934.

*State v. George Whitfield*

This defendant was convicted of rape and sentenced to electrocution at October Term, 1933, Guilford Superior Court. On appeal, no error was found and conviction sustained June 20, 1934, 206 N. C., 696.

Defendant filed, in the Supreme Court of the United States, petition for writ of certiorari. Through counsel, brief in support of petition was filed in that Court, and brief in opposition, prepared by Assistant Attorney General Bruton, filed by this Department.

The petition was denied October 8, 1934.

*Scott M. Loftin, Receiver Florida East Coast Railway Company v. William R. Kenan, Jr., Lawrence C. Haines, Trustees, University of North Carolina, et al.*

This action was brought in the Supreme Court of the State of New York, New York County, May 31, 1932.

The interest of the University of North Carolina in the litigation arose out of Item 8 of the will of the late Mrs. Mary Lily (Flagler) Bingham. Under that Item she directed her Trustees to pay over to the University the sum of \$75,000 per year for the purpose of paying the salaries of professors, the bequest being given in the interest of education of the youth of North Carolina and in memory of her father, William R. Kenan, and her uncles, Thomas S. and James Graham Kenan. It is under this bequest that the Kenan professorships were established and are now being maintained at the University. The estate was placed in trust for a period of twenty-one years, at the end of which time the will directed the Trustees to pay to the University "such sum in cash as, at the rate of interest then current in North Carolina, will produce an annual income of Seventy-five Thousand (\$75,000.00) Dollars, the amount of such sum to be determined by my said Trustees."

The plaintiff, as Receiver of the Florida East Coast Railway Company, brought the suit, contending and asking that, under other Items of the will, the Trustees be required to apply funds of the trust estate in their hands to the needs of the Railway Company. The case, then, involved a construction of Mrs. Bingham's will.

Evidence was taken under the direction of the Court, and the case came on for hearing June 25 and 26, 1934 before Judge Aaron J. Levy of the Supreme Court of New York, (which court corresponds to our Superior Court.) Judge Levy has not yet rendered his opinion.

Mr. George Gordon Battle and his firm of Battle, Levy, Van Tine and Fowler, of 37 Wall Street, New York City, are assisting this Department as special counsel for the University, and are rendering a fine service in the case.

*Anne Cannon Reynolds, et al., v. Zachary Smith Reynolds, W. N. Reynolds and R. E. Lasater, Guardians, et al.*

The cause entitled as above is pending in the Superior Court of Forsyth County. It involves distribution of the estate of Zachary Smith Reynolds, who died at Winston-Salem July 6, 1932. There are many interested parties.



The estate is largely the share of the said Zachary Smith Reynolds in the trust estates established by his father, the late R. J. Reynolds, and his mother, the late Mrs. Katherine S. Johnston. Available information is to the effect that at the time of the death of Zachary Smith Reynolds his share of said trust estate was worth approximately \$22,000,000.

On November 12, 1934, this Department filed intervention in said suit on behalf of the State of North Carolina, on relation of A. J. Maxwell, Commissioner of Revenue, seeking collection of the inheritance tax. Complaint was filed on that date and order made by Judge P. A. McElroy, holding the courts of that district, permitting the state to intervene for that purpose. The amount of the inheritance tax claimed by the State will depend upon final distribution of the estate among the claimants. Based on a proposal of settlement made by some of the parties, the inheritance tax would be approximately \$2,000,000.

#### NEEDS OF THE OFFICE

We are requesting that the General Assembly allow the Department four Assistant Attorneys General, one at a salary of \$5,000 per year, and the others at a salary of \$3,600 each. While the business of the State has grown enormously in recent years, and there have been increases in the personnel of other departments commensurate with such increases, such has not been the case with respect to the Attorney General's office. On the basis of data assembled in April, 1932, other states have assistant or deputy Attorneys General as follows:

Alabama, 6; Arizona, 4; Arkansas, 5; California, 24; Colorado, 10; Connecticut, 5; Delaware, 4; Florida, 5; Georgia, 6; Idaho, 4; Illinois, 28; Indiana, 10; Iowa, 6; Kansas, 5; Kentucky, 6; Louisiana, 6; Maine, 4; Maryland, 5; Massachusetts, 10; Michigan, 13; Minnesota, 10; Mississippi, 3 assistants and 2 special agents; Missouri, 9; Montana, 4; Nebraska, 7; Nevada, 1; New Hampshire, 1; New Jersey, 15; New Mexico, 4; New York, 104 deputies and assistants, 32 investigators, and 17 title examiners; North Dakota, 5; Ohio, 19; Oklahoma, 8; Oregon, 5; Pennsylvania, 22; Rhode Island, 4; South Carolina, 2; South Dakota, 5; Tennessee, 7; Texas, 18; Utah, 4; Vermont, 1 special investigator and 1 special counsel; Virginia, 2 regular and 4 special assistants; Washington, 6; West Virginia, 3; Wisconsin, 8 deputies and assistants and 4 investigators; Wyoming, 3.

#### LAW ENFORCEMENT

Crime has become one of our major problems. North Carolina should have a better set up for enforcement of the laws. This should head up in the Attorney General's office. That can be done under our present Constitution and without encroachment upon the constitutional powers and duties of other officers.

There is need for a re-writing and codification of our criminal laws. This is especially true with respect to laws relating to criminal procedure. The statutes should specify and definitely set forth the duties of law enforcement officers so that no officer and no citizen can doubt as to what those powers and duties may be.

A definite and sustained effort should be made to enforce existent laws. Until that is done, little good will follow enactment of new laws creating additional offenses.



Plenary evidence exists of wide spread violations of the Corrupt Practices Act in the primaries of 1932 and 1934. The law authorizes the Attorney General and the solicitors to make investigation of violations of this act. Of course, they cannot do that unless funds be provided for that purpose. Two years ago I asked for an appropriation of \$5,000 per year for investigations under the Anti-trust and the Corrupt Practices Acts. I am again submitting request for such appropriation.

Solicitors should be paid a reasonably adequate salary and required to give their whole time to the duties of the office. This would give them fuller opportunity for preparation of their cases.

## OPINIONS TO GOVERNOR AND BUDGET BUREAU

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BALANCED BUDGET—SALARIES—DUTY OF GOVERNOR AS DIRECTOR OF BUDGET

16 July, 1932.

For the opinion of this office you have submitted certain questions hereinafter stated. The nature of the inquiry may be best seen by a preliminary statement of the factual and legal situation.

Under the Executive Budget Act, Chapter 100, Public Laws of 1929, the Governor, as Director of the Budget, is charged with the duty of keeping the expenditures from the general fund for the current biennium within revenue receipts for that period. In other words, that act requires a balanced budget at the end of each fiscal biennium. That purpose is expressed in the concluding sentence of section 26 of the act:

"The purpose and policy of this act are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this act as to prevent such overdraft or deficit."

Certain powers are conferred upon the Governor, as Director of the Budget, for the accomplishment of this purpose. These relate generally to allotment from, and cuts in, the appropriations made to spending agencies of the state.

Certain appropriations from the general fund are not subject to cut or diminution by you, as Director of the Budget. Included within these are salaries of school teachers, the Judiciary, and certain constitutional and other officers. Chapter 371, Public Laws of 1931, directs that the appropriation for maintenance of the six months school term "shall be paid in full for the objects and purposes as therein set out."

Having made a survey of anticipated revenue for the fiscal year 1932-33, you have reached the conclusion that the budget cannot be balanced by cutting the appropriations that are within your control.

Upon the situation described, your questions, then, are as follows:

(1) May the Governor, as Director of the Budget, direct that a ratable percentage of salaries, but less than the whole amount due, be paid each month to all officers and employees?

(2) Or, may the payment of such salaries be made only as revenues in the general fund may be available for this purpose, this latter course resulting in the deferment of the payment of such salaries for each month at an increasingly distant date ahead?

I am of opinion that either course may be followed by the Governor, as Director of the Budget, with the advice and consent of the Advisory Budget Commission. The ratable percentage of revenue available for the payment of such salaries may be determined each month from a survey of revenue collections, section 26 of the Executive Budget Act. Or, the payment of all



salaries for each particular month may be made at such time as such survey of revenue collections will show that funds are available for their liquidation. Upon the adoption of either course, the State Treasurer would have the right to retain in the Treasury such reasonable balance as would assure payment of all vouchers as they may be presented.

The action so taken by you, as Director of the Budget, would not mean that there had been a cut in salaries. It would simply be a deferment of the payment of such salaries, or ratable proportion thereof, until funds were in hand and available for that purpose. The State would owe for the unpaid balance of such salaries until provision had been made for their payment.

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#### TERMS OF COURT—SUBSTITUTING SPECIAL TERM FOR REGULAR

23 December, 1932.

I have before me the request of county officials of Pender County, dated December 5 and 21, 1932, with respect to the terms of court for Pender County.

I know of no law conferring upon the Governor the power to abolish or call off a regular term of the Superior Court. Nor do I know of any statute giving such power to the board of county commissioners.

There have been instances where, because of the supposed exigencies of the occasion, certain terms of the Superior Court have not been held. I think that this can only be done by the appearance of the judge assigned to hold the court at the time named, and his adjournment of the court without entering upon any business, or by adjournment of the court under C. S. 1448, when the judge fails to appear. The matter of such adjournment of the court is, however, for the court itself, and not for this office.

The Governor may call special terms of court, C. S. 1450, et seq. Such special term may be ordered to be held in a county during the holding of the regular term in such county. But, I do not think that such special term can be substituted for the regular term.

I need not here go further into this matter of holding a special term in a county while the regular term is also being held.

It seems to me that the desire of the Pender County people, with respect to a change in their March Term of court can be attained by an act of the General Assembly, when it meets in January. It would seem that the bill can be easily and promptly passed changing the March court to a mixed term.

We are unable to find in the office any opinion contrary to what is here being said.

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#### CONSTITUTIONAL AMENDMENT AFFECTING INSURANCE POLICIES—WHEN TAKING EFFECT

27 December, 1932.

The Secretary of State inquires when the Constitutional Amendment, affecting insurance policies (which was carried in the election on November 8), goes into effect.



It was submitted under Chapter 262, Public Laws 1931, which provides the manner in which the amendment, if carried at the election, shall be certified and recorded, but is silent as to its effective date. That being true, the amendment takes effect from the date of its ratification by the voters at the election November 8. 12 C. J., 721, *In Re Advisory opinion to the Governor*, 24 Fla., 500; *Wade v. Moille*, 112 Ill., 79; *State v. Campbell* (Ohio), 115 N. E., 29.

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#### APPOINTMENTS TO FILL VACANCIES ON VARIOUS BOARDS, ETC.

12 May, 1934.

In yours of May 13th, you call attention to Section 2 of the Griffith Machinery Bill creating a State School Commission, to be constituted as follows: "The Governor as ex-officio chairman, the Lieutenant Governor, State Treasurer, and State Superintendent of Public Instruction, and one member from each congressional district to be appointed by the Governor and confirmed by the Senate." You inquire whether it is necessary for you to make these appointments before the adjournment of the General Assembly, or whether the appointments may be made thereafter, and confirmed at the next session of the General Assembly.

In my opinion, the act contemplates the appointment at this time, and confirmation by the present General Assembly, and that is the practice in these cases. However, I quote from an opinion rendered by the Attorney General February 21, 1925, which has some application to this case:

The rule in regard to filling vacancies where the original appointment is made by the Governor, by and with the consent of the Senate, is thus defined in *Salisbury v. Croom*, 167 N. C., 223:

"The Governor alone under the general power to fill vacancies conferred by sub-section 3 of section 7636 of the Consolidated Statutes, may make appointment (to vacancies), when the Senate is not in session. Such action could only be for the interval until the Senate meets and the two agencies specially provided by law, to-wit: the governor and the Senate shall concur in such appointment."

If the appointment is not made before adjournment of this session of the General Assembly, in my opinion original vacancies will occur at the time designated for the members of this Commission to begin their several terms of office, such original vacancies occurring by reason of the failure to make the appointments, and of the Senate to confirm. You have the power to fill these original vacancies by appointment, appointees to hold until the next General Assembly, when you should make further appointments and present the same to the Senate for confirmation. Of course, you may appoint the same persons if you so desire, but not necessarily so.

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#### CONSOLIDATED STATUTES 386, AS AMENDED BY P. L. 1933 CHAPTER 243

6 March, 1934.

I think that the Public Laws of 1933 amended Consolidated Statutes 386 in order to remove from the law an anomalous condition under that section;

for instance, a person might have been serving a ten year term and meantime apply for restoration to citizenship. It is my opinion that the word "discharge" now in the section must be taken to mean final discharge,—that is, after the final expiration of the wrong doing. I do not think that the section gives a paroled prisoner the right to apply for a restoration to citizenship during the term of the parole, for then we would have the situation referred to above, as upon breach of the parole the prisoner could be returned to the penitentiary and serve there as a felon after he had been restored to citizenship.

I repeat that in our opinion the word "discharge" does not relate to the date of the parole, but must be taken to mean the final discharge of the prisoner which, in contemplation of the law, would mean the time at which he became no longer amenable to the law for his offense.

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POLICE—APPOINTMENT BY GOVERNOR

25 May, 1934.

In reply to yours of May 23, based upon letter of Mr. Fred W. Bynum, inquiring as to the appointment of policemen for the mill village surrounding the plants of the Entwistle Manufacturing Co. and the Hannah Pickett Mills, I beg to say that the former inquiry on this subject was as to the appointment of policemen for these corporations, and, in our opinion, this might be done under the authority of the appropriate statute mentioned in our letter.

However, I do not know of any authority or any law under which the Governor might appoint a policeman for a *mill village*. Indeed, the question as to what authority is to be exercised by policemen appointed by the Governor for railroads and corporations is rather a complicated one. I think, however, that such authority is supposed to be confined to the protection of the property of such railroad or corporation, and to the apprehension of persons who violate the law especially applying in such case. It is not my opinion that policemen so appointed would have a general jurisdiction in connection with a village, such as would be exercised by a rural policeman or the policemen of an incorporated town. If, therefore, the purpose is to create such an office with such general authority, I cannot see that the Governor is authorized to appoint under the statute referred to.

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LEASE OF ATLANTIC & NORTH CAROLINA RAILROAD

12 June, 1934.

Complying with your request that I investigate the status of the lease of the Atlantic & North Carolina Railroad, now held by the Norfolk Southern Railroad Co., I beg to report the results of my investigation, and the conclusions I have reached, as follows:

The Norfolk Southern Railroad Co. has been operating the properties of the Atlantic & North Carolina Railroad under a lease originally given to the Howland Improvement Co., and, with approval, assigned to the



Norfolk Southern Railroad Co. The conditions of that lease, a copy of which I understand is now in your possession, require as compensation for the ninety-three year lease executed to the Howland Improvement Co., that the Lessee shall, amongst other things, pay a rental, increasing progressively in amount according to intervals of time named in the lease. That portion applicable to the rentals for the ten years following January 1, 1925, reads as follows:

and for and during the next succeeding ten years, from and after the first day of January, 1925, the sum of Sixty-two Thousand, Nine Hundred and Two, (\$62,902) Dollars annually, to be paid in equal installments of Thirty-one Thousand, Four Hundred and Fifty-one (\$31,451) Dollars each on the first day of July and the first day of January of each of the said years.

In addition to this, the lessee undertook, as a part of the rental price, to pay, "all taxes lawfully imposed upon the said leased property, or upon the franchises of the said Atlantic & North Carolina Railroad, or its income, whether by the State of North Carolina or any county, city, town, or township thereof, or by the United States," and thereby to relieve the Lessor from all taxes of every nature imposed upon the Railroad, or its properties, or rights, by any taxing power.

The Lessee obligated itself to pay, as an additional rental, during the continuance of the lease, the interest accruing on the bonded indebtedness of the Atlantic & North Carolina Railroad Co., as the same should fall due, limiting such liability to a principal of \$325,000.00, and providing that the Lessee should have the benefit of such reduced rate of interest as might be secured by refunding the indebtedness during the period of the lease.

A further stipulation provides that the Lessee shall pay to the Lessor "all the expenses of keeping alive the organization of the Atlantic & North Carolina Railroad Co.," and expenses of inspection of the road, all not to exceed \$1,200.00 a year.

A further stipulation requires that the Lessee keep the properties of the Lessor Company in repair, to expend upon the permanent betterment of the roadbed, for terminal facilities, and for equipment the sum of Two Hundred and Fifty Thousand (\$250,000) Dollars, within three years from the delivery to it of the property.

The Lessee agreed:

That it will keep the said railroad, roadbed, superstructure, depots, buildings, houses, shops, engines, cars, fixtures, and other property of every kind and part thereof, so hired, let, farmed out, and delivered, in equally as good condition and repair as the property is at the date of this lease, or to keep in the place of the same like things of equally good condition and repair; and to return at the end of the said term, or at other termination of the said lease, to the Lessor, its successors and assigns, the said railroad, road bed superstructure, depots, houses, buildings, shops, engines, cars, fixtures, and other property, and all and every part thereof, in like good condition and repair, or other property when any part of said property shall be worn out, destroyed, or abandoned, as good in quality and substance and in like good order and repair. The condition of the said railroad and property under this provision to be ascertained by examination and inspection by experts or their umpire, as hereinafter provided.



The Norfolk Southern Railroad Co. was placed in receivership on the 29th day of July, 1933, by an order of the District Court of the United States for the Eastern District of Virginia, and since that time the leased property has been operated by the Receivers. Up to this time there is nothing in the receivership proceedings indicating a purpose of liquidation, but, on the contrary such measures as have been taken are consistent with the view that the property has been taken over and is being operated for the purpose of conservation.

On the 26th day of June, 1933, the Receivers filed a petition in the court aforesaid, in the receivership proceeding, in which they asked permission of the court to make certain advances to the Atlantic & North Carolina Railroad Co., and to make partial payments to the State of North Carolina and its political subdivisions on account of taxes for the year 1932. The petition requested permission to pay out of current earnings to this Lessor "an amount not in excess of Ten Thousand Nine Hundred and Fifty (\$10,950) Dollars, on account of the earnings of the property covered by said lease, of which amount Twelve Hundred (\$1,200) Dollars shall be advanced for organization expenses, and the sum of Nine Thousand Seven Hundred and Fifty (\$9,750) Dollars to be used by the Lessor Company in paying the interest on the mortgage indebtedness of the Lessor, due January 1, 1933."

In filing their petition the Receivers of the Railroad Company were careful to have it understood that such advances should not "constitute an election to adopt, or an adoption, or an election to reject, or a rejection, of the contract of lease of said line railroad, and said amount to be advanced by Receivers and accepted by the Lessor Railroad Company, on that specific understanding." Correspondingly, I assume that the payment under such conditions, would not constitute a waiver on the part of the Lessor of a breach of the condition of the lease in that respect. We need not pass upon this point, however, as the status of the lease may be determined without regard to it.

The above mentioned proceeding is entitled as follows: "*Central Hanover Bank & Trust Co., as Trustee, et al, Plaintiffs, v. Norfolk Southern Railroad Company, et al, Defendants*, Consolidated Cause, in Equity No. 278 And In the Constituent Causes Numbered 268, 278 and 290, of Said Consolidated Cause."

#### *Default in Payment of Fixed Rental*

By reference to the books of the Secretary and Treasurer of the Atlantic & North Carolina Railroad Co., it will be found that the Lessee is in default in the payment of the interest due on January 1, 1933, July 1, 1933, and January 1, 1934, the said payments being in the sum of \$31,450.00 each, or a total of \$94,350.00. It is in default in the payment of the interest on the \$325,000.00 bond issue for the 23 months just past. It is in arrears and in default for non-payment of 23 installments of \$100 per month from July 1, 1932, down to the present. Should such default continue after July 1, 1934, the Lessee will be in arrears \$167,204.00 on these items.

#### *Default in Payment of Taxes*

In Chapter 181, Public Laws 1933, a provision was made whereby delinquent taxes, including the 1931 tax, might be adjusted and an installment

note given for such taxes, extending the payment over a period of five years. The note when properly executed is declared a lien prior to all other liens upon the property upon which the taxes were due. This same chapter, however, provided that such an arrangement was, within the discretion of the taxing authorities, conditioned upon the payment of the 1932 taxes. From the correspondence in my possession I find that in order to avail themselves of the provisions of this law the Receivers paid the ad valorem taxes for 1932 to the counties and municipalities through which the leased railroad runs, and caused a note or notes to be executed, taking advantage of the installment feature of the statute. The officials of the Atlantic & North Carolina Railroad declined to sign these notes, and I am unable to state at this time the exact manner in which the tax adjustment was made. It is apparent, however, that such an arrangement could not be in compliance with the lease, as it still leaves the property just where it was before, liable to the lease. The ad valorem taxes for 1933 remain unpaid.

A reference to the quotation from the lease covering the obligations of the Lessee in this regard will show that such obligation extends to all the taxes of whatever kind, and not merely to the ad valorem taxes. The Lessor Company is, of course, liable for franchise and income tax. Inquiry at the Revenue Department discloses that the Norfolk Southern Railway Co. has adopted the procedure of listing the leased property as its own, and, therefore, the property thus enters into the measurement of the Norfolk Southern franchise tax, and the Atlantic & North Carolina Railroad franchise tax is thus indirectly paid.

No income tax report has been made by the Atlantic & North Carolina Railroad Co. for the two past years, and no income tax has been paid by the Norfolk Southern Railway Co. Since all the revenues of the Lessor Company come from the Lessee, there has been nothing to tax.

#### *Upkeep of the Railroad and Properties*

I think that an equally serious situation exists concerning the manner in which the Lessee has treated its obligations relating to the property under its upkeep obligation.

It will be noted that the lease directs that two competent experts shall be appointed, one on the part of the Lessor, and the other on the part of the Lessee, to make an annual inspection and an annual inventory of the property, who have the power to choose an umpire to ascertain whether default has been made in the manner in which the Lessee has carried out this condition of its lease. For the exact terms I must refer you to the lease itself.

Examining a number of the reports of the officers of the Atlantic & North Carolina Railroad Co. to its stockholders, running through 1930, 1931, 1932, and 1933, I find reports of this nature included therein, purporting to be made by "experts." The 1930 report is signed by "D. C. Humphrey, Expert, Atlantic & North Carolina Railroad Co.," and "F. L. Nicholson, Expert, Norfolk Southern Railroad Co." The 1931 report is signed in the same manner. The 1932 report and the 1933 report are also signed by the same experts, but there is an explanation on the part of Mr. Humphrey that he is really a layman and not an expert, "but is of the opinion that the



foregoing report is correct." In the 1932 report Mr. Humphrey recommends that an engineer be employed to inspect the road.

In my opinion, these reports are not in compliance with the original lease, and I question whether the Lessor Corporation is bound by them.

As to whether the Lessee has violated its contract regarding the upkeep of the road and equipment is, of course, a question of fact; nevertheless, it is proper for me to call it to your attention in this connection, as I have reason to believe that an investigation will disclose that this important condition of the lease has not been observed by the Lessee Company, and that the railroad and properties have been permitted to deteriorate, in violation of the terms of the lease.

However, it is not necessary to pass upon that question here, for in my opinion the lease has been forfeited because of the other defaults mentioned.

The lease required that the Lessee should deposit bonds in the sum of \$100,000 to guarantee the performance of its obligations, and particularly the payment of the graduated rentals above mentioned. My information is that this deposit has not been made. This of itself would justify a termination of the lease by the method provided in the agreement; but I mention it here to show that the State is deprived of that remedy respecting the collection of its rentals. The lease provides that where default has been made in the payment of the rentals or taxes the Lessee may, on thirty days notice, appropriate to the payment thereof the deposited securities above mentioned; and also provides that upon the failure to perform these stipulations the Lessor "shall have the right to enter upon and resume possession of the said railroad and of the other property, rights, franchises, of every kind and description, and the term and estate of the Lessee herein shall at once cease and determine."

In my opinion, because of the facts herein mentioned, and because of the defaults above referred to, the lease of the Norfolk Southern Railroad Co. of the property and franchises of the Atlantic & North Carolina Railroad Co. has been forfeited, and that the Atlantic & North Carolina Railroad Co. has the present right of reëntry and reoccupation of its properties; and that it is free now to make commitments, agreements, or leases, with reference thereto, regardless of such forfeited lease.

I have noted that the Norfolk Southern Railroad Co. is in a receivership in the United States Court, and that these Receivers are operating the property under the aforementioned lease. In my judgment, the receivership proceedings do not have any effect in relieving the default of the Norfolk Southern Railroad Co. occurring either before or after the date of such receivership. However, no doubt, the proper course to pursue is to bring the facts to the attention of the United States Court in which the receivership is pending, and there, upon motion or petition, have the property formally returned to its owners by order of court.

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#### EXPENSE ALLOWANCE, MEMBERS OF STATE BOARDS, ETC.

26 August, 1933.

In your recent letter you ask certain questions with respect to expense allowances for members of the Advisory Budget Commission, the State



School Commission and the State Highway and Public Works Commission. Section 7 of the Appropriation Act, Chapter 282, Public Laws, 1933, fixes compensation and expense allowances for members of these Commissions at "\$7.00 and necessary travel expenses." "Necessary travel expenses" are made up of the two items of subsistence and transportation. I think that these expenses for the members of these Commissions are limited by section 8 of the Appropriation Act. Members of these Commissions would be entitled to subsistence as defined therein at the rates as therein set out, transportation at the rate of 5c per mile when using personally owned automobile, and actual cost of such transportation when traveling by other means, train, bus, etc.

Members of these Commissions would be entitled to charge for subsistence not alone for the days spent here in attendance upon meetings of such Commissions, but also for the time or days reasonably and necessarily spent in coming to or returning from Raleigh for the purpose of attending such meetings.

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ALLOTMENT FROM THE CONTINGENCY AND EMERGENCY FUND FOR THE EXPENSES  
AND COMPENSATION OF THE ELEMENTARY TEXT BOOK COMMISSION

20 November, 1933.

We are advised that pursuant to Chapter 136, Public Laws 1923, and the amendment thereof by Chapter 464, Public Laws 1933, an Elementary Text Book Commission has been appointed and called to meet at the office of the Governor on Thursday of this week. Dr. A. T. Allen, State Superintendent of Public Instruction, has addressed to you a letter, in which he states that it is necessary to make an application for an allotment out of the Contingency and Emergency Fund to take care of the expenses of this and subsequent meetings of this board.

It is the expectation of the law that the expenses of this board shall be paid out of the funds under the control of the State Board of Education, and there are no such funds now in existence. This is an emergency that calls for allocation from the Contingency Fund, and seems to be a proper subject for such allotment.

However, the question has arisen as to the application of the Appropriation Act to the compensation provided for the members of this Commission. This Compensation is fixed at \$200.00 a year, and while small, of course is a salary and not a per diem compensation. Under Chapter 282 Public Laws 1933, the Maintenance and Appropriation Act, Section 5, provides for the reduction of salaries and wages. Section 5, I think, would be inapplicable to the present case, except for sub-section (d), which purports to reduce the salaries of all persons under the appropriation under Title IX, public schools. If the members of the Text Book Commission are to receive any compensation at all from the Contingency Fund, it is upon the theory that a necessary public work has been placed upon them, requiring certain service for which they are to be paid compensation, and that no appropriation has been made therefor, the language of the statute in that respect purporting to making appropriation out of a fund that does not exist, or is not sufficient to pay the appropriation. In my opinion, we

cannot tie this appropriation in under Title IX, relating to the public schools, so as to make Section 5, Sub-section (d) apply; and I conclude that there is no reduction intended for the compensation of the Text Book Commission.

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STATE'S PRISON DEPARTMENT—ACCOUNTING—PROPERTY OF THE DEPARTMENT  
PRIOR TO JULY 10, 1933

30 June, 1934.

The Maintenance Appropriation Act of 1931, Chapter 429 Public Laws 1931, Section 1, Division VIII, 12, made an appropriation to the State's Prison and provided that "all receipts for the sale of produce and the hire of prison labor and/or such other receipts as may result out of the operations of the State's Prison are covered into and become a part of the General Fund of the State." Section 4, Chapter 172 Public Laws 1933, passes control and management of the property of the State's Prison to the "State Highway and Public Works Commission," created by that chapter. The consolidation of the Prison Department with the Highway Commission under the new organization known as "State Highway and Public Works Commission" took place July 10, 1933, under Section 9 of the Act. The disposition of certain produce of the Prison Department on hand July 10, 1933, and the proceeds thereof, has now come in question.

Of course, when the status of the Prison Department was fixed by the Appropriation Act of 1931, as regards accounting for the receipts from the sale of produce, there was no thought of consolidation with the Highway Department. When this took place under Chapter 172, Public Laws 1933, I do not think that any strict attention was given to the matter of accounting. However, much confusion might result from an attempt to follow up consumable produce and receipts from surplus sold subsequent to July 10, 1933. I think a fair interpretation of that act, consistently with the purposes of the 1931 Appropriation Act, would be that under Section 4 of the 1933 Act the property of the Prison Department passed over to the new State Highway and Public Works Commission, and that it was the intention that consumable produce might go into the hands of the Highway and Public Works Commission without further accounting.

However, I understand that there was a quantity of cotton which had been produced under the old arrangement, and which had been reported to the Governor. In my opinion, the proceeds of this cotton should be covered into the General Fund, as provided in the Maintenance Appropriation Act of 1931. With this exception, only actual receipts from produce sold prior to that time would be required to be covered into the General Fund.



## OPINIONS TO SECRETARY OF STATE

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### CERTIFICATE OF INCORPORATION —THIRD INCORPORATOR—ESTATE

18 May, 1933.

You inquire whether a certificate of incorporation having two individuals as incorporators, the third incorporator being "Estate of John Doe by John Smith, Trust Officer of ————— Bank and Trust Company," conforms to C. S. 1114, which provides that three or more persons may be incorporators of an incorporated company.

In my opinion, section 1114 refers to natural persons and an estate cannot be an incorporator of an incorporated company, although it might become owner of stock.

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### PUBLICATION OF REPORTS—COST—CONTINGENCY AND EMERGENCY APPROPRIATION

13 July, 1933.

I am in receipt of your letter of July 12, re: publications required by Chapter 483, Public Laws 1933.

A part of Chapter 282, Public Laws 1933, section VIII, 1, under the head of "Contingency and Emergency," is as follows:

"To provide for contingency and emergency expenditures for any purpose authorized by law, for which no specific appropriation is made or for which inadvertently an insufficient appropriation has been made hereunder."

Publication of the reports referred to is required and authorized by said Chapter 483, Public Laws 1933. No specific appropriation is made for the costs of such publication. I am of opinion that such costs clearly come within the provisions of the Contingency and Emergency item, reference to which is made above, and that such costs may, and should be, paid out of that appropriation.

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### REPEAL CONVENTION—CORRUPT PRACTICES ACT—REPORT OF CAMPAIGN COMMITTEES

29 September, 1933.

You ask my opinion as to whether Chapter 348 (the Corrupt Practices Act) of the Public Laws of 1931 applies to the election to be held on November 7 on the question of calling a convention and electing delegates thereto to pass on the prohibition repeal amendment submitted to the States by the Congress.

The term "campaign committee" is defined by section 2.b of that act to include "any committee, association or organization which accepts contributions or makes expenditures for the purpose of influencing or



attempting to influence the nomination or election of any candidate at any primary, general or special election."

Those favoring the repeal amendment and those opposing it have set up State-wide organizations with headquarters here in Raleigh. Each of these organizations is seeking to influence the election of delegates to the convention. Each of them, therefore, comes within the definition of "campaign committee" as contained in the act.

Each of these State organizations, or campaign committees, should, therefore, make report to your office of contributions received, and expenditures made, by them. Local organizations or campaign committees making expenditures in only one county should make reports to the clerk of the superior court. Any candidate for delegate to the convention who receives contributions or makes expenditures in the campaign should also make a report to the clerk of the superior court of his county.

The details with respect to these reports may be easily seen by reference to the act itself.

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#### FOREIGN CORPORATIONS—DOMESTICATION—TAXATION

28 October, 1933.

Yours containing letters of Messrs. Poffenbarger & Poffenbarger, relating to the Dunbar Trucking Company, of Dunbar, West Va., is presented to us with an inquiry regarding the liability of the Dunbar Trucking Co. for taxation in this State.

This company desires to establish a fixed terminal at Winston-Salem, in order to collect freight for out-of-state shipments, and also suggests leasing a portion of this terminal to other carriers, to serve as a garage and for an assembly point for out-of-state transportation.

In my opinion, the Dunbar Trucking Co. would, under the circumstances, be doing business in North Carolina, and would be subject to such taxes as apply to the business.

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#### CORPORATIONS—DISPLAY OF NAME—C. S. 1136

8 June, 1934.

Consolidated Statutes 1136, requiring that the name of every corporation shall be at all times conspicuously displayed at the entrance of its principal office in this State, applies to foreign corporations doing business in this State, as well as to domestic corporations. This is in accordance not only with practice, but with the construction which has been placed on similar laws in other jurisdictions.

## OPINIONS TO STATE AUDITOR

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### DUTIES OF STATE AUDITOR—DISBURSEMENT OF APPROPRIATION FOR MOTOR VEHICLE BUREAU

23 August, 1932.

You have asked my opinion as to how the appropriation for the Motor Vehicle Bureau as contained in Section 3 (XII), 2, of the appropriation act of 1931 should be disbursed.

By C. S. 7675.9 certain duties of the State Auditor are set out as follows:

To have the exclusive power and authority to issue all warrants for the payment of money upon the State Treasurer, and it shall be the Auditor's duty, before issuing the same to examine the laws authorizing the payment thereof, and satisfy himself of the correctness of the accounts of person applying for warrants.

A portion of C. S. 7682 is as follows:

To pay all warrants legally drawn on the Treasurer by the Auditor; and no monies shall be paid out of the Treasury except on the warrant of the Auditor.

By C. S. 2621.31, expenses of collecting certain State Highway revenues are to "be paid for monthly from the revenue derived from said fees by warrant of the Auditor on the State Treasurer." Subsequent to the passage of this act, the Motor Vehicle Bureau was set up as a part of the Revenue Department. Section 18 of the Executive Budget Act, Chapter 100, Public Laws of 1929, places all State departments, institutions and agencies on an appropriation basis. No subsequent act, however, specifically changes the method of the payment of these expenses, whether on the appropriation basis or otherwise, from that as contained in C. S. 2621.31 as set out above.

It is suggested that a different method may be set up by reason of Section 4, Chapter 337, Public Laws of 1929, which confers upon the Director of the Budget Bureau power to "prescribe the manner in which disbursements of the several institutions and departments shall be made." Such language, however, is not sufficient to support that view.

I am of the opinion that the appropriation for the Motor Vehicle Bureau in the appropriation act of 1931 should be disbursed upon warrants of the Auditor on the State Treasurer in the same manner as such warrants are issued and paid with respect to the disbursement of appropriations made for other State departments.

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### STATE AUDITOR—SELECTING EMPLOYEES

31 May, 1933.

In your letter of May 27, you state that on April 30 Mr. C. A. Gantt left the service of your department. Mr. A. H. Howell was promoted to the position vacated by Mr. Gantt; Mr. R. D. Thomas to fill the vacancy created by promotion of Mr. Howell; and Mr. O. D. Stallings to the position theretofore held



by Mr. Thomas. No appointment has been made to fill the position vacated by the promotion of Mr. Stallings.

The payroll for your department for the month of May was certified to the Division of Personnel on the basis of these changes, the allotment for your department being sufficient for that purpose. On May 24, you received from Mr. Henry Burke, Assistant to the Director of the Budget Bureau, and acting for the Division of Personnel, memorandum to the effect that "It is not possible to authorize or approve the arrangements suggested in the memorandum of the 19th, on the information that it contains." It is also suggested in this memorandum from Mr. Burke that "the personnel arrangement in the State Auditor's office should continue as it had existed prior to the separation of C. A. Gantt."

Upon this statement of facts, you ask my opinion as to the right of the Division of Personnel or the Budget Bureau to decline approval of payroll, as submitted.

The answer is that neither the Budget Bureau nor the Division of Personnel has any such right. A general discussion on the subject is contained in Volume 21, Report of the Attorney General, page 190, letter of March 22, 1932, to the Chairman of the State Highway Commission, and page 125, letter of March 30, 1932, to the State Auditor.

Neither the Budget Bureau nor the Division of Personnel has any authority to select, or control the selection of, subordinates and employees in other departments. Any right of either of these State agencies to pass on payrolls is, of necessity, subject to action taken as established by law in the creation of positions in your department, and the appointment of subordinates and employees to such positions by you.

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#### DUTY OF STATE AUDITOR TO MAKE AUDIT OF STATE SCHOOL FUNDS

1 July, 1933.

In your letter of June 16, you ask my opinion as to whether it is your duty to make an audit of the State school funds, to be disbursed under the School Machinery Act of 1933.

Certain duties are imposed upon you, as State Auditor, by C. S. 7675. Among these are:

1. To superintend the fiscal concerns of the State.
2. To report to the governor, annually, and to the general assembly at the beginning of each biennial session therefor, a complete statement of the funds of the state, of its revenues and of the public expenditures during the preceding fiscal year, and, as far as practicable, an account of the same down to the termination of the current calendar year.
4. To keep and state all accounts in which the state is interested.
5. To examine and settle the accounts of all persons indebted to the state, and to certify the amount of balance to the treasurer.
7. To examine and liquidate the claims of all persons against the state, in cases where there is sufficient provision of law for the payment thereof; and where there is no sufficient provision, to examine the claim and report the fact, with his opinion thereon, to the general assembly.



9. To have the exclusive power and authority to issue all warrants for the payment of money upon the state treasurer; and it shall be the auditor's duty before issuing the same, to examine the laws authorizing the payment thereof, and satisfy himself of the correctness of the accounts of persons applying for warrants; and to this end he shall have power to administer oaths, and he shall also file in his office the voucher upon which the warrant is drawn and cite the law upon said warrant.

11. To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn or paid by him.

C.S. 7675 is not repealed by Section 21 of the School Machinery Act of 1933. Assuming that these State school funds are to be disbursed upon warrants other than yours, the law at the least places upon you the duty of making an audit of such funds.

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#### STATE TAXES—SHERIFFS COMMISSIONS

25 September, 1933.

I undertake to answer your inquiry of today as follows:

The first sentence in the fourth paragraph of Section 492, of the Revenue Act of 1931, relating to the state-wide property tax levy for schools is as follows:

The tax levy herein provided for shall be subject to the same discounts and penalties as provided by law for other county taxes, and there shall be allowed the same percentage for collecting such taxes as for other county taxes.

A portion of C. S. 8042 is as follows:

The Sheriff and Tax Collectors shall receive 5 per cent on all taxes collected by them for state, county, township, school district, or other purposes whatsoever, up to the sum of \$50,000.00; and upon all such sums so collected by him in excess thereof he shall receive 2½ per cent commission.

It is the opinion of this office that the Sheriff or Tax Collector is entitled to the 5 per cent commission on the first \$50,000 of taxes collected by him for all purposes, and thereafter to commissions of 2½ per cent of all taxes so collected for all purposes in excess of \$50,000. My view then is that the commissions allowable to the Sheriff or Tax Collector in collection of this state-wide property school tax, would not be figured or determined upon the amount of such taxes so collected, but along with the county taxes. The average of such percentage of commissions can be determined in the manner set out in your letter.

It is also the opinion of this office that the State is entitled to its percentage of the penalties collected on these taxes, and chargeable also with its proper percentage of the discounts allowed.

## OPINIONS TO STATE TREASURER

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### TRANSFER OF REGISTERED BONDS

26 August, 1932.

By an amendment to the Banking Act enacted by the 1931 General Assembly, being Chapter 385, Public Laws of 1931, the Commissioner of Banks succeeds to the rights and for the purposes mentioned in your letter, the title to all items belonging to the bank being liquidated (and the liquidating agent appointed by the Commissioner of Banks has the same power), "for the purpose of liquidating, and sales and conveyance of the same, together with any and all other incidental rights, privileges and powers necessary and convenient for the enjoyment of the right of conveyance and sale and for the exercise of the same."

A certificate to be signed by the Commissioner of Banks or the liquidating agent appointed to liquidate the particular bank setting forth the fact that the bonds in question had been sold and the title thereto conveyed to the purchaser, naming him, would be sufficient to support the transfer of the bonds.

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### LOST COUPONS—STATE BONDS

14 October, 1932.

I have your inquiry based upon the letter of the Guaranty Trust Company of New York, in which it is stated that a customer wishes to collect interest without presentation of certain coupons on educational and charitable institution bonds Nos. 6605 and 6607, which they claim have been lost.

The law makes no provision covering this situation. However, I think that you might proceed as a matter of business on the analogy existing with regard to the collection of lost negotiable instruments between private persons. In that case, payment is made on the making of a proper indemnity.

In the case of the State, however, a greater caution would have to be observed, because of the fact that such coupons, to a very large amount, are outstanding, and it would be exceedingly difficult to identify them when presented for payment so as to stop payment on a coupon bond, which interest has already been collected in this way. This, however, is a matter which you must deal with, as your business judgment directs you. I only say that I do not think that there would be anything unlawful in payment by you of such interest, if you are thoroughly satisfied that the coupons have indeed become lost and if you are furnished such reasonably sufficient indemnity as may satisfy you.

You should certainly have affidavits fully explaining in detail the circumstances connected with the loss of these coupons. The fact that they are not now in the hands of the claimant would not be at all satisfactory. I do not think, however, that you would render yourself liable on your bond as treasurer for the payment of such interest, after you have made diligent inquiry about the matter and have taken sufficient indemnity.

## RE-ISSUE OF BONDS TO REPLACE STOLEN BONDS

3 May, 1934.

As far as I have been able to examine the laws, I can find no provision for the re-issue of bonds to replace those claimed to have been stolen.

In the absence of special authority, I do not think it could be done, and I am not aware of any precedent which has been established by your predecessors.



# OPINIONS TO SUPERINTENDENT PUBLIC INSTRUCTION

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## USE OF SCHOOLHOUSES FOR ENTERTAINMENTS AND SHOWS REQUIRED TO BE LICENSED

6 May, 1933.

I have your letter of May 5th enclosing letter of County Superintendent R. W. Allen of Wadesboro. In that letter, he states that moving pictures have been shown in the schoolhouse, the proceeds going jointly to the private promoters and the schools. He says that objection is made to this on the part of licensed movie operators, and inquires of you what course to take.

The persons who operate shows under the given conditions will be liable for the tax, notwithstanding the fact that division of profit or proceeds is made with the schools. The use of the schoolhouse has nothing to do with that feature of the matter, and it is purely a matter of policy and propriety with the school officials as to whether or not they will permit the schoolhouses to be used for that purpose.

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## STATE EDUCATIONAL INSTITUTIONS—FREE TUITION—S. B. 361

18 May, 1933.

You have sent us copy of S. B. 361, abolishing free tuition in State institutions, with certain exceptions. You inquire whether or not physically disabled students certified by the Vocational Rehabilitation Division of the State Board of Vocational Education are entitled to free tuition for *all courses*, offered by the institutions named in this act.

The exception to the provisions of the act abolishing free tuition in the institutions named is dealt with in the last paragraph of section 1:

Except such students as are physically disabled, and are so certified to be by the Vocational Rehabilitation Division of the State Board for Vocational Education, who shall be entitled to free tuition in any of the institutions named in this act.

In my judgment the students certified to be physically disabled in the manner provided in this act are entitled to free tuition in all of the courses offered by the institutions, provided, of course, they are qualified to take these courses. The latter part of the provision quoted is comprehensive in this respect and must be construed to include all courses, as there is no restriction named.

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## RESIDENCE, MEMBER COUNTY BOARD OF EDUCATION

8 June, 1933.

In my opinion, a member of the county board of education may reside anywhere in the county, even in a city administrative unit entirely surrounded by outside county territory, regarded as a county unit.

## PUBLIC SCHOOLS—GENERAL

16 June, 1933.

Your letter of May 31 received. I undertake to answer your inquiries submitted as follows.

(1) What becomes of the school property in a special charter district when the territory is not within a recognized city administrative unit?

*Answer.* I think this is determined by the proviso at the end of the second paragraph of section 4 of the School Machinery Act:

*Provided*, that in all cases where any existing special charter district is included in a district as determined by the State School Commission the trustees of the special charter district and their duly elected successors shall be retained as the governing body of such district and the title to all the property of the special charter district shall remain with such trustees.

My conclusion, then, is that the title to the property remains in the board of trustees of the district and their duly elected successors.

(2) Can a county like Durham or Guilford, in which is located one or more large cities, vote on a county-wide basis to supplement the eight months school fund and divide the money on a per capita basis? The law says that all county-wide funds shall be divided on a per capita basis. I was wondering if there is not something inherent in a county organization coming over from the Constitution that would apply to them, although it is not, as I see it, specifically mentioned in the law.

*Answer.* A valid argument may be made in support of either view on this question. I prefer to give the matter further consideration before undertaking to answer.

(3) What form of petition, if any, is necessary in order to call an election in an administrative unit?

*Answer.* The election is to be held upon request of the members of the county board of education in the county unit and/or the board of trustees in the city administrative unit.

(4) Can a city administrative unit under the old law and the Supreme Court decisions applicable thereto, issue bonds without a vote of the people for capital outlay purposes?

*Answer.* No.

(5) Can a county, without a vote of the people, issue bonds for the purpose of erecting school buildings necessary for the six months school term?

*Answer.* Yes.

(6) Can a county take over part of the debt service in the several districts and leave part of it on the districts?

*Answer.* No.

(7) Does the county board of education select and elect the teachers under the authority in the law to make contracts?

*Answer.* Section 130 of the School Code, now III C. S. 5533, sets out the manner in which a school committee shall select school teachers. Section 101 of said School Code subjects such employment to approval by the county



superintendent of schools. Section 12 of the School Machinery Act of 1933 does not undertake to deal with the selection of teachers, but only with fixing their salaries and making the contracts based upon such fixation of salaries.

Repeals by implication are not favored. There is no direct or necessary conflict between sections 130 and 101 of the School Code on the one hand, and section 12 of the School Machinery Act of 1933 on the other. It, therefore, follows that the school committee retains the power to select school teachers, subject to approval of the county superintendent of schools, the making of the contracts by fixing the salaries of such teachers being by section 12 of the School Machinery Act of 1933 placed in the hands of the county board of education.

(8) Would the local committeemen, when appointed, have the authority, under the old law, to select teachers as they are now selected?

*Answer.* The answer to this is found in the answer to (7) above.

(10) In case the superintendent-elect does not qualify on the first day of June, would the old superintendent continue to hold office until the newly elected man qualifies?

*Answer.* Yes.

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#### SCHOOL FUNDS

29 June, 1933.

I undertake herewith to answer additional questions submitted, involving construction of the School Machinery Act, Chapter 562, Public Laws 1933.

1. In a special charter district, whether it is or is not classified as an administrative unit, the existing board of trustees and their duly elected successors will, under the proviso at the end of the second paragraph in section 4 of the Act, be retained as the governing body of such district. The membership of such board, as vacancies occur, will be chosen in the manner as heretofore set up under the particular special charter.

Such a district, when not erected into a city administrative unit, becomes a part of the county school system and the county administrative unit. Teachers in such a school are to be selected by the board of trustees, subject to approval by the county superintendent of schools, and subject to the making of the contracts with them by the county board of education. And, in all other respects, except as indicated in the paragraph above, such district takes the status of other districts within the county system.

2. Unused and unspent balances in the operating or maintenance fund of a district, proceeds of special maintenance taxes collected prior to the date the Act was ratified, May 15, 1933, may be budgeted and spent in the next school year, in accordance with the purpose for which they were so voted—that is, “to supplement the funds for the six months public school term for that district.”

3. The proceeds of special maintenance taxes, uncollected at the date of the ratification of the Act, May 15, 1933, should, in a district having debt service requirements, be applied to that purpose, payment of unpaid teachers' vouchers for the year in which the tax was levied being a preferred claim.



4. A different situation is presented with respect to such uncollected or maintenance taxes in a district which has no debt service requirements. A portion of the language in the concluding paragraph of section 4 of the Act is susceptible of the construction that in such case such taxes as collected are to be used as a part of the county debt service for schools. Since these taxes were voted and paid by the people of the district, the presumption is that such result was not intended. So long as a school is maintained for the children of the district wherein the taxes were voted and paid, the proceeds of such maintenance taxes, there being no debt service requirements, are to be used for the purpose for which they were voted—"to supplement the funds for the six months public school term for that district."

Therefore, such taxes as collected under the circumstances set out should be so used for the school year 1933-34, or subsequent school years.

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SCHOOL LAW—COMMITTEE—NUMBER

18 July, 1933.

I answer inquiry submitted to this office by a county superintendent of schools as follows:

Section 123 of the School Code of 1923, now 3 C. S., 5526, provides for a school committee, consisting of three persons, to be appointed by the county board of education for each non tax local school district. Section 145 of the School Code, now 3 C. S. 5546, provides that the county board of education may, in its discretion, select not less than three nor more than five committeemen in local tax districts. There are no longer any local tax districts. Therefore, section 123 applies to all school districts, and only three committeemen can be elected or serve in any school district.

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SCHOOL LAW—LEVY FOR COUNTY-WIDE SCHOOL DEBT SERVICE

19 July, 1933.

I undertake to answer various questions submitted to this office with respect to permissible tax levies for school purposes.

1

The necessary levy for county-wide school debt service should be made by the board of county commissioners as heretofore authorized. The School Machinery Act of 1933 neither enlarges nor restricts the power and authority of the board of county commissioners to make such a levy.

The county in issuing or assuming such obligations acted as a governmental agency of the State in providing the necessary buildings and equipment for operation of the constitutional six months school term. That such indebtedness could be so incurred by the county, acting as a governmental agency of the State for that purpose, is well established by a number of cases—notably *Lovell v. Pratt*, 187 N. C., 686; *Frazier v. Commissioners*, 194 N. C., 49 (with full discussion of the whole subject); *Hall v. Commissioners*, 194 N. C., 768; s. c. 195 N. C., 367; and *Julian v. Ward*, 198 N. C., 480. The apposite statutes are

sections 175, 178 and 179 of the School Code of 1923, now III C. S. 5596, 5599 and 5600, and the County Finance Act as amended.

## 2

The county commissioners may also make county-wide levy for a capital outlay fund for necessary school buildings and equipment; see sections 172 and 175.b, School Code of 1923, now III C. S. 5585 and 5596.b. Here again the county is acting as a governmental agency of the State in providing buildings and equipment necessary for the constitutional six months school term.

## 3

By section 16 of the School Machinery Act of 1933, funds "derived from fines, forfeitures, penalties, dog taxes, poll taxes and from all other sources except State funds," are set aside to be used as a part of the county public school fund for the objects of maintenance of plant and fixed charges.

Where the receipts from these sources are insufficient for the objects of maintenance of plant and fixed charges, the board of county commissioners may make a county-wide levy at a rate sufficient to meet such needs. Such a tax levy would be for the purpose of operating the constitutional six months term.

## 4

Under section 291 of the School Code, now III C. S. 5701, the teaching of vocational agriculture and home economics was established as a part of the public school course for which a county-wide tax levy could be made.

Section 4 of the School Machinery Act is most confusing with respect to levy of taxes for the teaching of these subjects. I think the better view is that a county-wide tax may be levied for such purpose under the authorization as contained in section 291 of the School Code, now III C. S. 5701, where such taxes were so levied for the school year 1932-33.

## 5

Heretofore, under C. S. 5016, the county board of education and the board of county commissioners each provided out of its funds a part of the salary and expenses of the superintendent of public welfare as such, or the county superintendent of schools performing the duties of the position. The part of such salary and expenses supplied by the county board of education came from the funds derived from the tax levy for support of the constitutional six months school term. The county board of education can make no contribution to this purpose unless a tax levy of that nature can now be made by the board of county commissioners.

The proviso at the end of the first paragraph of section 5 of the School Machinery Act of 1933 is to the effect "that a county superintendent may serve as welfare officer and have such additional compensation as may be allowed by the county commissioners of said county, to be paid from county funds," etc. I am of opinion that the term, "county funds," so used does not include public school funds and, therefore, that no county-wide school tax levy can be made for the purpose of paying the salary and expenses of a county superintendent of public welfare as such, or of a county superintendent of public instruction performing the duties of that position. I am unable to find in the School Machinery Act of 1933 any authorization, or provision or saving clause, by which the right to make a levy for such purpose as a part of the support of the constitutional six months school term has been retained or preserved.



## 6

Section 18 of the School Machinery Act directs that tax levying authorities shall provide bonds for the protection of county and district school funds. Section 8 directs that these authorities shall make provision for their proportionate part of the cost of the audit of such county and district school funds.

Here is an expenditure authorized by law. I am of opinion that the imposition of the duty and the authorization of the expenditure justify the conclusion that boards of county commissioners may levy a county-wide tax, as being for support of the constitutional six months school term, to provide the funds necessary for these bonds and the auditing of these accounts.

## 7

Section 8 of the School Machinery Act forbids the use of any State funds for rural supervisor. The act contains no authorization, or proviso or saving clause, by which the right to make a county-wide levy for such purpose as a part of the support of the constitutional six months school term is preserved or retained.

## 8

Taxes must be levied as heretofore voted for the payment of bonds issued by or for any and all forms of school districts. Such taxes must be levied within the territorial limits of the old districts as constituted at the time of the voting of such bonds, whether or not they coincide with the lines of the newly established district.

## 9

In *Hampton v. Board of Education*, 195 N. C., 213, the Supreme Court held that where the practice of "budgeting forward" had been followed by the county board of education, the county was liable for unpaid school teachers' salaries for the months so "budgeted forward" and extended into a subsequent fiscal year. The abolition of the special school district maintenance taxes by the School Machinery Act must be interpreted as being prospective in its operation. I think that where this practice of "budgeting forward" has been established and followed in any county or school district, the Hampton case is authority for the conclusion that a sufficient tax levy may now be made to provide the funds with which to meet the obligations of such county or district to its unpaid teachers.

## 10

Where a special tax district has an operating deficit legally incurred for the payment of which uncollected taxes are insufficient, a somewhat similar question arises. Again it would seem that the abolition of these special school district maintenance taxes by section 4 of the School Machinery Act must be interpreted as being prospective in its operation and not as an extinguishment of these obligations. The Hampton case is persuasive, but not conclusive, authority on this question.

## 11

Where there has been failure in some preceding year or years to levy a sufficient rate in any school district to meet debt service or sinking fund requirements, necessarily, an increased levy may be made from time to time to build up such sinking funds so as to meet bond obligations as they fall due.



SCHOOL LAW—RIGHT OF COUNTY COMMISSIONERS TO ISSUE BONDS FOR  
SCHOOL BUILDINGS

29 August, 1933.

You ask the opinion of this office as to whether a board of county commissioners has the right to issue bonds and incur indebtedness, without a vote of the people, for the purpose of buying or erecting school buildings necessary for the operation of the six months school term.

For our basic authority, we here go back to the Constitution. Article IX, section 2, directs the General Assembly to "provide by taxation or otherwise for a general and uniform system of public schools." Section 3 of that Article requires that each county "shall be divided into a convenient number of districts in which one or more public schools shall be maintained at least six months in every year."

Legislation on the subject has sought to carry these requirements of the Constitution into effect. Section 175.b and c of the School Code of 1923, now III C. S. 5596.b and c, authorize a school budget containing a capital outlay fund for the purchase of sites, school buildings and necessary equipment, and a debt service fund for the payment of loans due the State, interest and principal of bonds and obligations incurred for school building purposes. Section 179 of the School Code, now III C. S. 5600, authorizes a board of county commissioners to assume district indebtedness found to have been incurred in providing buildings and equipment necessary for the six months school term.

The procedure with respect to issuance of bonds for this purpose was further developed by Chapter 81, Public Laws of 1927, as amended, known as "The County Finance Act." Included within the objects for which bonds may be issued by the county without a vote of the people, as set out in section 8.a of that act, is "(a) Erection and purchase of schoolhouses." A further step in the procedure is submission to, and approval of said bond issue by, the Local Government Commission as required by section 11 of the Local Government Act, Chapter 60, Public Laws of 1931, as amended.

There has been a uniform line of decisions of our Supreme Court sustaining the right of a board of county commissioners to issue bonds without a vote of the people when that body finds as a fact that issuance of such bonds is necessary to provide buildings and equipment for the conduct and operation of the six months constitutional school term. Among the cases to that effect are *Lacy v. Bank*, 183 N. C., 373; *Lovelace v. Pratt*, 187 N. C., 686; *Frazier v. Commissioners*, 194 N. C., 49 (with full discussion of the whole subject); *Hall v. Commissioners*, 194 N. C., 768; s. c., 195 N. C., 367; and *Julian v. Ward*, 198 N. C., 480. These cases are so definite, positive and clear that further discussion would seem to be unnecessary.

As you will note, there must be a finding of fact made by the board of county commissioners that the purchase or erection of the school buildings and or the purchase of the equipment is necessary for the conduct and operation of the constitutional six months school term, followed by approval by the Local Government Commission. When the procedure outlined by the statutes has been followed and the bonds issued, they become, and are, valid obligations of the particular county by which issued.

SCHOOL LAW—APPROPRIATION BY CITY—ADULT ILLITERATES—CANNOT LEVY TAX  
OR BORROW MONEY FOR SUCH PURPOSE WITHOUT VOTE OF PEOPLE

17 October, 1933.

In your letter of October 13 you ask my opinion as to whether the City Council of High Point can make an appropriation for teaching of adult illiterates.

I think it quite clear that no authority exists for the levy of a tax for this purpose without a vote of the people. In *Adams v. Durham*, 189 N. C., 232, the Supreme Court held that the City of Durham, having in hand funds from the proceeds of the sale of a city lot, might use the money in erecting a building for city government offices, etc. In *Nash v. Monroe*, 198 N. C., 306, the Court said that the City of Monroe, if it had money in its treasury, could purchase equipment for a hospital with such money, but that it could not borrow money for such purpose without a vote of the people.

It may be that the Court would say that the City of High Point, out of any surplus in its treasury, could make an appropriation for this purpose. But it is clear, however, that it cannot levy a tax or borrow money for the teaching of adult illiterates without a vote of the people.

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SCHOOL LAW—POLL TAXES—SUPPORT OF POOR

2 February, 1934.

I am in receipt of your letter of February 1, sending letter of January 31 from Mr. E. E. Sams, Superintendent of Schools, Lenoir County, re: poll taxes.

By the express language of the Constitution, Article V, Section 2, the proceeds of State and county poll taxes are to be applied to education and support of the poor, not more than 25 per cent of such taxes to be appropriated to the latter purpose in any one year. Therefore, the schools are entitled to three-fourths of all such poll taxes and this is true whenever they may be collected. When back taxes are collected, three-fourths of the proceeds of all such poll taxes should be applied to the support of the public schools.

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WORKMEN'S COMPENSATION ACT—COMPENSATION INSURANCE FOR TEACHERS

6 June, 1934.

In reply to your inquiry of May 16, 1934, upon above subject, based upon a letter to you from Mr. R. M. Wilson, of Rocky Mount, N. C., we beg to reply as follows:

Mr. Wilson writes that Rocky Mount administrative unit—a city administrative unit created under direction of the 1933 School Machinery Act—pays supplements to teachers, and some of the teachers and janitors receive all of their pay from funds raised by the local unit. He inquires whether or not the local unit must carry compensation insurance, and if it would be liable in case of injury to one of the above named employees.

A former letter of the Attorney General which you have, based upon the 1931 law, which is not materially changed in that respect by the 1933 Act,



distinguishes between the application of the Workmen's Compensation Act to teachers who are employed in connection with the six months school term, and paid out of the appropriation made by the State, and those who receive supplements from the special district and are employed with special reference to the extended term.

Perhaps now the distinction should be more specifically drawn between the teachers and employees receiving pay only out of the six months school appropriation made by the State, and those who receive supplements and are paid for the extended term by the district. As to the former, Chapter 562, Section 24 of the Public Laws of 1933—the School Machinery Act—applies. It reads as follows:

Section 24. The provisions of the Workmen's Compensation Act shall be applicable to all school bus drivers, mechanics, and janitors. The State School Commission shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as applicable to this class of school employees. All other school employees paid from State funds are declared to be exempt from any and all provisions of the Workmen's Compensation Act or any amendments thereto.

As to the last sentence of this section, exempting from the provisions of the Workmen's Compensation Act "all other school employees paid from State funds," it is not my understanding that this would exempt from the operation of the Act teachers or other employees who are paid both from State funds and from district funds, in so far as liability might attach to the district. It is my opinion that the court would construe this statute only as exempting such employees from the Workmen's Compensation Act in so far as it affected the State funds alone, or any provision that might be further made for them by the State. It is conceivable, however, that the law intended to take all such employees out of the operation of the Workmen's Compensation Act, and thereby solve a somewhat complex problem relating to the liability of the district, and the relation of its board or committee to the employment of the teachers.

It is my best judgment, however, that this section would not interfere with the liability which would otherwise attach to the district because of the employment of teachers and other persons who receive pay out of the district funds, as distinct from the State appropriation.

To some extent the case of *Perdue v. Board of Equalization*, 205 N. C., 730, is applicable. This case construes the 1931 statute, but it is applicable here in the sense that it sustained an award made by The Industrial Commission to the Administrator of Perdue against the Statesville Graded Schools District. At the same time, it denied the liability in so far as the State and the State Board of Equalization were concerned. That case stressed two points: first, that Perdue, the injured teacher, was not an employee of the State of North Carolina nor of the Board of Equalization, although employed to teach in the six months school term, and receiving his pay in part out of that fund; and, second, that the provisions of the 1931 Act, Chapter 430, Section 30, provide that "no allowance shall be made for compensation insurance for any of the counties of the State."

In my judgment, unless the Rocky Mount city administrative unit desires to exempt itself from the operation of the Workmen's Compensation Act by resolution as provided in Section 1, Chapter 274, Public Laws 1931, the city

administrative unit would be liable for injury to an employee, under the conditions named in that Act; and with respect to employees not otherwise provided for, under the 1933 School Machinery Act and section above mentioned, the city administrative unit should provide compensation insurance.

It is true that the School Machinery Act of 1933 applies to administrative units a new and different nomenclature other than that employed in previous laws, but I do not think that this affects the application of these statutes.



## OPINIONS TO COMMISSIONER OF AGRICULTURE

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### INSURING COTTON IN MUTUAL FIRE INSURANCE COMPANY—No Authority

30 July, 1932.

In your letter of July 29 you ask the opinion of this office as to whether you are permitted to insure cotton with mutual insurance company.

On February 19, 1921, and March 9, 1922 (see biennial report of the Attorney General for 1921-22, pages 138 and 120), Attorney General Manning held that there was no authority of law for the carrying of insurance by the State or its subdivisions in mutual fire insurance companies.

That conclusion was based upon C. S. 6348, under which every person insured in a mutual fire insurance company is a member thereof. There was not then, nor now, authority of law by which the State or one of its departments or agencies may become a member of a mutual fire insurance company.

I adhere to the official opinion then given by Attorney General Manning with respect to the State, its departments and agencies. I, therefore, advise that you have no authority to carry this insurance for the State in a mutual fire insurance company.

The policy sent—No. 1003 of Continental Insurance Company—is herewith returned.

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### INTOXICATING LIQUORS—"DISTILLER'S RUM SYRUP" AND "RUMONOG"

12 December, 1932.

In reply to your letter regarding the legality of possession and sale of the products known as "Distiller's Rum Syrup" and "Rumonog," I think the legality of the sale of either would depend upon whether or not it may, in its existing condition, or by ordinary dilution with some simple substance like water, be used as a beverage.

It is stated in the Turlington Act that it is the purpose of that law to prevent the use of intoxicating liquor as a beverage. Many things with a high alcoholic content are sold, but ordinarily, alcohol is used for the purpose of preserving some other ingredient—usually medicinal, but sometimes a flavoring. In these products, it seems that the alcohol is not used for such purpose.

I think, however, it is more a question of fact than of law. If, in your opinion, the product will be non-intoxicating when diluted to the point where it may be used as a beverage, I should say that its use might be permissible—otherwise not.

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### STATE FAIR—DUTY OF BOARD OF AGRICULTURE TO CONDUCT

26 June, 1933.

You ask my opinion as to whether it is a mandatory duty of the Board of Agriculture to conduct a State Fair, as was the case under acts of the General

Assembly preceding 1933, and as construed and referred to in my letter to you of May 26, 1932.

No. The Appropriation Act of 1933, Chapter 282, section 2, Title 11-2, is as follows:

1933-34      1934-35

22. State Fair ..... 1933-34      1934-35

In the parenthesis below, the following occurs: "The State Fair under title XI-2 may be operated within its own receipts in the discretion of the State Board of Agriculture."

You will observe that there is no appropriation for the conduct of the State Fair. It must operate, if at all "within its own receipts." And it is legally within "the discretion of the State Board of Agriculture" as to whether that Board will undertake such a task.

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#### CHAPTER 551—PUBLIC LAWS 1933—EXAMINATION OF LABORATORIES

14 November, 1933.

You inquire of this department a construction of Chapter 551, Public Laws 1933, as to the duties devolving upon you under this law; and with special reference to a letter of Mr. James J. Parker, who has expressed to you his wish to be examined as a "fertilizer chemist," under authority of that Act.

The law in question gives you no authority to examine or certify any person as a chemist. It merely authorizes you, upon application of any commercial laboratory that analyzes fertilizer or fertilizer materials, to make such examination as you see fit of the work of the laboratory, and if you should find such work to be accurate, so to certify. This would, of course, I assume, extend to an examination of the equipment used and the methods employed, in order to ascertain whether or not the result of the work carried on is accurate.

You are authorized also under this Act to furnish the names of certified laboratories to those who request the same. Your duties go no further.

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#### AGRICULTURAL DEPARTMENT—EMPLOYEES

7 December, 1933.

You have submitted to this department request for an opinion as to whether the employees of the Agricultural Department, such as janitors, night watchmen, etc., are subject to the control of the keeper of the Capitol under Chapter 315, Public Laws of 1925.

I have examined, as far as I can, the laws enacted since that time, to see whether or not the situation has been changed, and I find none definitely changing the situation as it existed under the 1925 laws.

This matter was referred to Hon. Frank Nash, Assistant Attorney General, December 23, 1925, and he gave it as his opinion that you have the entire control of such workers in your department, and I see no reason to change that opinion in any respect.



## PROHIBITION—BRANDIED CHERRIES

22 January, 1934.

Answering your inquiry of January 17, based upon the inquiry of C. M. Pitts & Sons Co. to the Secretary of State, I will say that the North Carolina Prohibition Act, which we know as the Turlington Act, applies to beverages, and it prohibits the manufacture, sale, transportation and possession of intoxicating liquors.

You may refer to C. S. 3411.b to the expression: "All the provisions of this article shall be literally construed to the end that the use of intoxicating liquor *as beverage* may be prevented." Refer also to C. S. 341.a, in which the terms "liquor" and "intoxicating liquor" are defined: "When used in this article—

"(1) The word 'liquor' or the phrase 'intoxicating liquor' shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter and wine, and in addition thereto any spirituous, vinous, malt or fermented liquors, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of one per centum or more of alcohol by volume, which *are fit for use for beverage purposes.*"

Heretofore it has not been considered a violation of law to sell medicinal compounds or extracts, which contain only a sufficient amount of grain alcohol to preserve the essential qualities of the medicine or extract, and keep them in solution in case the compound is not fit for use as a beverage.

You inquire here whether or not Maraschino style cherries put up in brandy syrup, having an alcoholic content of 7 per cent or 8 per cent by weight, and approximately 10 per cent by volume, would come within the prohibition of these laws.

I note that it is stated in the description of this product: "The product in question is purely a brandied fruit and cannot by any stretch of imagination be considered a beverage, nor could the brandy flavored syrup, which would be drained from the fruit, be used as a beverage, in that the sugar content would be sufficiently high to make it sickening." If we concede that this statement is true, the product would not be such a one as to come within the definition laid down in the Turlington Act. That, however, is a matter of fact with which I cannot deal. The point, of course, is as to whether or not the product, or a simply separated portion of it, "is fit for use for beverage purposes."

You will observe that I have not definitely stated that the product named in the letter may be sold in this State without violating the law. This is for the reason that the facts involved would have to be passed upon by a court, if such question should arise. In case of conviction in such a court, I would feel it my duty to endeavor to sustain such conviction in the Supreme Court.

I know of no special licenses required in this State for the sale of such product, nor does the State prohibition law require the alcoholic content to be named on the label.

You are familiar with the Pure Food and Drug Acts, federal and state, and we do not go into those requirements. There would be no tax placed upon this product if its sale is lawful under the foregoing statement, because of its alcoholic content.

BULLETIN RELATING TO THE TESTING OF MILK AND MILK PRODUCTS—LICENSING  
MILK TESTERS AND SALE OF MILK AND MILK PRODUCTS

28 March, 1934.

I have carefully examined the Bulletin issued in March, 1934 "Relating to the Testing of Milk and Milk Products, Licensing Milk Testers and Sale of Milk and Milk Products," by your Department. In my judgment it correctly sets forth and explains the law relating to the subject with which it deals; and the information which it gives should be extremely valuable in settling many matters not well understood relating to this subject, the qualifications for service on behalf of those dealing therewith, and the rules and regulations established by the Department by virtue of its authority under the law.

The work is very thorough and I hope it has been widely circulated.



## OPINIONS TO CORPORATION COMMISSION AND UTILITIES COMMISSIONER

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### SECTION 1104 (a) OF THE REVISAL—REPEAL

2 August, 1932.

You inquire whether or not section 1104 (a) of the Revisal has been repealed, and you suggest that perhaps its main provisions have been incorporated in the Justice Act, Chapter 20, Public Laws 1913, Extra Session.

The Justice Act is brought forward in the Consolidated Statutes, and will be found in Article IV, Chapter 20, especially section 1067, et seq. While many of the provisions of this Act are not repugnant to the section of the Revisal mentioned by you, some of the provisions of section 1104 (a) of the Revisal would not be repealed by implication on the theory that the Justice Act made other provisions relating to the same matter. I am of opinion, nevertheless, that this section of the Revisal has been repealed by not having been brought forward in the Consolidated Statutes.

Chapter 135, Consolidated Statutes, covers the matter of repeal of former laws by the enactment of the Consolidated Statutes. Section 8101 reads as follows:

*Effect as to Repealing Other Statutes.*—All public and general statutes not contained in the Consolidated Statutes are hereby repealed, with the exceptions and limitations hereinafter mentioned.

The exceptions and limitations, in so far as the Public Laws are concerned, are contained in section 8106, the pertinent part of which is as follows:

The Consolidated Statutes shall not have the effect to repeal \* \* \* any public statute, which affects only a particular locality.

I am of opinion, therefore, that section 1104 (a) of the Revisal has been repealed.

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### INTERSTATE COMMERCE—CHAPTER 136, PUBLIC LAW 1927

6 June, 1934.

You state that one J. B. Whitener of Maiden has been advertising scenic and educational tours by motor vehicle from points in this State to points in other states and Canada, and you state further that he had a number of fatal accidents last year and that it developed that he carried no insurance. You state that all of his operations are interstate in character and inquire if you can make him comply with the provisions of Chapter 136, Public Laws 1927. The answer is no.

Section 15 of the above Chapter provides: "That neither this act nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union. . . ."

We are not permitted to advise as to what action a person injured in one of these accidents might take. That would be a matter between himself and Mr. Whitener.

# OPINIONS TO INSURANCE COMMISSIONER

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## LOAN SHARKS—LOAN INSURANCE

19 December, 1932.

I have given very careful consideration to the letter that you have written to us on above subject, and have examined carefully the specimens of "Conditional Obligation" which you have furnished.

Beyond any question, the contracts are contracts of insurance, and the companies attempting to do this kind of business come within your jurisdiction. As a practical matter, however, in getting at this situation, and weeding out this class of loan sharks, it seems to me that the application of the criminal law is the simplest way,—in fact the only practicable thing to do.

I have given due weight to your suggestion that in most cases the office is run by a girl, who is really innocent of any intention to violate the law, and the actual offenders are hard to get at, but if these girls should be warned and insist in attempting to carry on the business, it seems to me that, in the public interest, some action should be taken, and it should be left with the judge of the court as to what should be done. One such conviction, even though no punishment follow, would probably break up the practice.

Besides that, the conspiracy law would apply. In order to convict of the conspiracy, it will be necessary to get evidence such as that you have furnished me, and perhaps much more, such as literature sent to these offices and correspondence. No doubt if you have the names of the persons in another State actually carrying on this work here, an indictment of the local person, together with the person in the other state would create a situation where the evidence could be easily procured. There can be no question at all as to the liability of the person in the other state to the criminal law in this State, when he has entered into a conspiracy with a person within the State, and there are overt acts committed here.

I will be glad to talk with you about the matter further, if you so desire. We are keeping the file until you shall determine what you wish done about the matter.

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## B AND L ASSOCIATIONS—TAXES

14 July, 1933.

Under section 138 of the Revenue Act of 1931, cities and towns were allowed to levy a license tax on Building and Loan Associations, not exceeding 2 cents on each \$100.00 actual book value of shares. No such provision is made in section 138 of the Revenue Act of 1933. I am therefore of opinion that such tax cannot be levied by cities and towns on Building and Loan Associations.

However, there is general authority in C. S. 2677, permitting towns to tax trades, professions and franchises carried on therein. By reason of that section, this office has heretofore advised officials of cities and towns that a license or privilege tax, in reasonable amount, may be levied on Building and Loan Associations.



GROUP INSURANCE—TEACHERS—AGREEMENT TO TAKE PREMIUMS FROM  
THEIR SALARIES

22 September, 1933.

I am in receipt of your letter of September 14 with respect to payment of premiums on group insurance of teachers upon a signed agreement by such teachers to permit amount necessary for such premiums to be taken out of their salaries by the State disbursing officer.

I call your attention to Chapter 249, Public Laws of 1925, now III. C. S. 7675.d as follows:

All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment or any such claim or any part or share thereof, shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein.

This statute would seem to effectually prevent such transfers and assignments or the issuance of any warrant to the assignee of any part of such teachers' salaries.

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BUILDING AND LOAN ASSOCIATIONS—BONDS OF HOME OWNERS' LOAN CORPORATION

4 October, 1933.

You ask the opinion of this office as to whether a domestic building and loan association may accept bonds of the Home Owners' Loan Corporation, created by Act of Congress, June 13, 1933, in lieu of, and in exchange for, notes and mortgages of its borrowing members.

The Act of Congress referred to authorized the creation of the Home Owners' Loan Corporation, and directed the Secretary of the Treasury, on behalf of the United States, to subscribe for stock therein in the aggregate amount of \$200,000,000. The corporation is authorized to issue its bonds in the sum of \$2,000,000,000, to mature in not more than eighteen years, the proceeds to be used in carrying out the purposes of the act. These bonds bear interest at the rate of 4 per cent per annum, the interest being fully and unconditionally guaranteed by the United States. The payment of the bonds is not guaranteed by the United States, but the corporation itself is an agency of the Federal Government.

The corporation was created primarily because of the emergency existing by reason of the inability of so many owners of homes to meet their obligations to creditors. It does not lend money directly for this purpose, but affords its relief by exchanging with such creditors its bonds for the obligations of home owning debtors, upon the plans and manner set out in the act.

A building and loan association makes loans to its members on the security of first mortgages on real estate, payment to be made in monthly installments, C. S. 5182. By C. S. 5170, the association has the right "to hold

and dispose of property, both real and personal." In order to assure a reasonable degree of liquidity, the association, by C. S. 5177, is directed to keep at least 5 per cent of the aggregate amount of its paid up stock outstanding, invested in United States or North Carolina bonds or stocks or bonds of the Federal Home Loan Bank, or on deposit in an approved bank or banks.

At times it becomes necessary to sell the property of the member because of his failure to meet the monthly payments. In the exercise of good business judgment, the board of directors of the association may determine that for the protection of its interests, the association should buy the property.

The property so bought must be sold. It may make such sale advantageously by accepting these bonds of the Home Owners' Loan Corporation. Under such circumstances, I think that may be done.

Another situation develops. The member borrower is behind in his payments. A sale of the property is imminent. Such sale must, and will, be made unless some adjustment of the indebtedness is had. The association is offered these bonds of the Home Owners' Loan Corporation. Thereupon, it may be determined whether it will proceed with the sale, to ascertain whether upon such sale a purchaser will appear, or that it will buy in the property with the hope of recoupment and salvaging the loss. Under such circumstances, may it, then, exchange the note and mortgage of its member for bonds of the Home Owners' Loan Corporation?

We think the better view is that this may be done. Of course, the decision to do so must be based upon the need as it appears to exist. It must reasonably appear that the transaction is necessary to protect the association from loss on the mortgage. In reaching a conclusion, the board of directors would, of course, consider the value of such bonds at the time of the transaction, and their probable market value during such period as it may be necessary or advantageous to hold them.

We think, then, that the better reasoning is that the statutes which require the taking of real estate as security for loans and the making of certain investments to secure liquidity are not prohibitive with respect to the transactions herein discussed. The Insurance Department has certain duties of examination and supervision with respect to building and loan associations, and this opinion can only be for the guidance of that Department in the performance of such duties. It cannot authoritatively determine the rights and duties of the officers of building and loan associations. For that reason, I think it the better course that a test case be brought so that the Supreme Court may pass upon the question presented in relation to the powers of building and loan associations in the respects herein discussed. Upon such a case, an authoritative decision could be expeditiously had and all doubts and uncertainties resolved one way or the other.



## OPINIONS TO COMMISSIONER OF LABOR

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### CREWS BILL—CHAPTER 35, PUBLIC LAWS OF 1933—APPLICABILITY TO BEAUTY SHOPS

27 July, 1933.

I understand from your letter that Mairfair Beauty Shoppe of Durham, N. C., contends that the Crews Bill, limiting the hours of labor, has no reference to the employees of that establishment.

Perhaps not. But its applicability does not depend upon any distinction between so-called "beauticians" and "salesladies." If a female employee of a beauty shop is engaged in selling articles of merchandise to the public, such person would be a saleslady under the statute, regardless of the fact that she might also be a "beautician." I would say, however, that if the employee was merely engaged in the practice of beautifying customers, or assisting in that work, the statute would not apply. I do not think that an occasional sale of cosmetics or similar article would bring the employee within the statute.

# OPINIONS TO COMMISSIONER OF REVENUE

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## INCOME TAX

6 July, 1932.

I have examined two income tax returns made by above named taxpayer, one for the calendar year ending December 31, 1929, and one for the calendar year ending December 31, 1930. I note that the taxpayer has reported exemptions in three respects, not sustained by the law: 1st. As to a dependent minor, who was over eighteen years of age and not mentally or physically incapacitated; 2nd. As to motor vehicle license fee, and, 3rd. As to personal expenses in excess of \$300.00, "while away from home." You have corrected both returns in each of these instances, and calculated the tax based upon the corrected returns, disallowing the items.

In my opinion, your procedure is mainly correct, and the listed items were not deductible, except the item of motor vehicle license fee, which I construe to be a deductible tax.

While there is a question in my mind as to whether or not any part of the item of personal expenses "while away from home" is deductible, under the law, I will not disturb the uniform practice of your department in that respect, but do approve of the disallowance of excess over the \$300.00, which you have heretofore allowed as the limit of such deductions.

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## STATE LICENSE TAX—LIABILITY OF REGISTER OF DEEDS THEREFOR

23 July, 1932.

The State Revenue Act requires of Registers of Deeds that they should remit one fourth the license fees collected by them on marriage licenses. You instance a case where such fees have been deposited by the Register of Deeds in a bank which failed and closed before the end of the quarter. You inquire whether the State is compelled to wait until liquidation of the bank for this tax.

No. When the Register of Deeds deposits the tax in a bank of his own choosing, as a matter of convenience, until such time as he may remit it to the Department of Revenue, he becomes guarantor of the fund, and his relation to the State is not that of a mere trustee, and he is held to a reasonable prudence only in the selection of a depository. The loss, if any, is that of the Register of Deeds who collects the tax, and a failure of the bank constitutes no legal cause for delay in settling.

The principle that a public officer is an insurer of funds in his hands has been repeatedly announced and affirmed in our Supreme Court, in a long line of cases, some of which are as follows:

*Commissioners v. Clark*, 73 N. C., 255; *Smith v. Patton*, 131 N. C. 284; *Marshall v. Kemp*, 190 N. C., 491, at p. 493; *Indemnity Co. v. Corporation Commission*, 197 N. C., 562, at p. 564.



In *Marshall v. Kemp, supra*, it is said: "The liability of a public officer differs from that of a trustee or a bailee. The general rule is that an officer who enters into an obligation to account for money received by him in his official capacity—insures, as Justice Rodman said, against loss by any means whatever, including such losses as arise from the act of God or the public enemy."

This is quoted with approval in *Indemnity Co. v. Corporation Commission, supra*.

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FEDERAL LAND BANKS—PROCESS TAX—FORECLOSURE SUITS—SECTION 157,  
REVENUE ACT, 1931

31 August, 1932.

The Federal Land Bank of Columbia has raised the question with several Clerks of the Superior Court that it is not liable for or required to pay the process tax imposed by section 157 of the Revenue Act of 1931. These Clerks of the Superior Court have thereupon asked for my opinion as to whether they have the right to collect this process tax from, and in suits instituted by, the said Federal Land Bank.

The Federal Land Bank relies upon the language of section 26, Chapter 245, of the Act of Congress of July 17, 1916, Title 12, U. S. C. A., section 931, which is as follows:

931. Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section 761 and section 781 of this chapter. First mortgages executed to Federal land banks, or to joint-stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

And upon the case of *Federal Land Bank of New Orleans v. Crosland*, 262 U. S., 373, 67 L. ed., 703. That case, in an opinion by Justice Holmes, held that the State of Alabama could not collect a tax of 15 cents per one hundred dollars on the principal sum secured in mortgages executed to the Federal Land Bank. It held that other registration fees could be charged and collected, but that the 15 cents sought to be imposed was a tax on the bank and mortgage.

I am of opinion that this case is compelling authority for the position taken by the Federal Land Bank. I, therefore, advise that you and the Clerks of the Superior Court should not undertake to collect this \$2.00 process tax from Federal Land Banks in actions brought by them in the courts of this State.

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PETITION FOR REFUND OF INCOME TAX PAID

13 September, 1932.

It appears that this concern made a composition with certain of its creditors by which they accepted fifty cents on the dollar in full settlement of their claims. The difference between the full amount of the indebtedness

and the amount paid thereon was included as income in the return of the taxpayer, and taxes paid thereon. The taxpayer claims that the income tax so paid was erroneously assessed, in that such difference was not income within the meaning of the Revenue Act of 1931.

I am of opinion that the contention of the taxpayer is correct. In *Commissioner v. Simmons Gin Company*, 43 Fed. (2nd), 327, and again in *Burnett, Commissioner v. Campbell Company*, 50 Fed. (2nd), 487, it was held that indebtedness cancelled by creditors because of the debtor's financial condition, enabling debtor to pay balance, is not taxable income. The case of *Bowers v. Kerbaugh Empire Company*, 271 U. S., 170, 70 L. ed., 886, while not directly in point, furnishes some authority for the same conclusion.

It is the opinion of this Department that on the facts as stated, the taxpayer is entitled to refund of such amount as may be found to have been paid upon this erroneous return.

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#### RADIO EQUIPMENT FOR AN AUTOMOBILE—ACCESSORY

14 September, 1932.

After carefully considering the matter, which was the subject of our conference, and, also, referred to in your letter of September 9, I have come to the conclusion that the radio equipment of the type that is peculiarly fitted and adapted to use upon an automobile, and which is not suitable for use otherwise, may be considered an automobile accessory.

However, I do not consider this as determining the question of taxation, and as exempting a person who deals in that kind of instrument from the tax assessed under section 147 of the Revenue Act. I think it is competent for the legislature to pick out any particular article, dealt in as extensively as radios are, and as forming the subject of such a considerable business, and making the business taxable, although it might fall in a category of articles otherwise classed. In my opinion, the adaptation of the instrument to the automobile does not operate to exempt it from the tax.

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#### CAROLINA DISCOUNT CORPORATION—INCOME TAX—DEDUCTIONS

12 October, 1932.

I have your inquiry, together with income tax report for the year 1931, of Carolina Discount Corporation at Aberdeen, N. C.

I note on the income report this corporation styles itself "Corporation Bankers." In a letter addressed to the Commissioner of Revenue by an accountant of George G. Scott & Company, the position is taken that this corporation is a bank, under the definition given under Article 7, section 551, subsection 27 of the current Revenue Act; and that because it is a bank they are not limited to the six per cent (6%) deduction mentioned in the proviso of subsection 3 of section 322. In my opinion, this position is not correct. I do not consider the Discount Corporation a bank within the meaning of the statute. The construction put on subsection 27 of section 551 in above letter is not tenable. The language is as follows:



(27) The terms "Bank," "Banker," "Broker," "Stock Jobber," mean and include any person, firm, or corporation who or which has money employed in the business of dealing in coin, notes, bills of exchange, or in any business of dealing, or in buying or selling any kind of bills of exchange, checks, drafts, bank notes, acceptances, promissory notes, bonds, warrants, or other written obligations, or stocks of any kind or description whatsoever, or receiving money on deposit.

It is obviously not intended that the terms, "bank," "banker," "broker," and "stock jobber" shall be used interchangeably, nor that all the succeeding part of the paragraph shall apply to each of them individually; I think it is intended that they be referred to collectively, so that if any of them engaged in the transactions mentioned, it would be liable to the tax.

I think the term "bank," used in section 322, subsection 3, is intended to mean a bank engaged in the ordinary commercial activities which bring it under the supervision of the Commissioner of Banks. This corporation is not a bank in this sense and is not entitled to the exception in favor of such a bank in making the deduction.

This is with the understanding that the Carolina Discount Corporation is engaged only in dealing in and discounting commercial paper, or like obligations.

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#### LICENSE TAX ON BUYERS OF SCRAP TOBACCO

19 November, 1932.

Section 142½ of the current Revenue Act imposes a license tax of \$500.00 upon every person, firm or corporation engaged in the business of buying or selling scrap tobacco. A proviso is added, as follows:

(d) Provided this section shall not apply to a buyer who buys only from the farmer, who hauls his own product to the warehouse, or prize house, for delivery to the buyer.

The purpose of the Act evidently was to impose a tax upon the dealer in this kind of tobacco, who probably goes from farm to farm making the purchases, and yet to avoid penalizing the farmer by limiting his market. While I think it is permissible for the farmer in perfectly good faith to have such tobacco hauled to the place of sale, I do not think that the spirit of the law is obeyed when the agent appointed by the farmer is the person who buys tobacco, or some person acting for such buyer. If a person could purchase tobacco from the farmer at his farm and then receive appointment as agent to carry it away, it is obvious that that would be only an evasion of the law, as the farmer has no interest in the matter whatever after his tobacco is sold and paid for.

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#### AMERICAN TELEPHONE & TELEGRAPH COMPANY OF NORTH CAROLINA—FRANCHISE TAX LIABILITY YEAR 1927-1931 INCLUSIVE

13 December, 1932.

In your letter of November 29, you set out facts with respect to American Telephone & Telegraph Company of North Carolina and ask my opinion as to liability of such company to franchise tax.

Upon the facts presented, I am of the opinion that this company is liable to franchise tax upon a proper construction of sections 201, 210 and 213 of the Revenue Act.

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TAXATION CHARITABLE ASSOCIATION—EXEMPTIONS

16 January, 1933.

You have submitted for further consideration the question of exemption from taxation of the property of a charitable institution, which seeks to engage in certain enterprises, including manufacture in Durham County. The circumstances will be understood from the former letter. Mr. Fuller heretofore suggested that there might be some conflict between section 493 of the Revenue Act and section 304 of the Machinery Act. Section 493 of the Revenue Act reads as follows:

Whenever in any law or act of incorporation, granted either under the general law or by special act, there is any limitation or exemption of taxation, the same is hereby repealed, and all the property and effects of such corporation, other than the bonds of this State and of the United States Government, shall be liable to taxation, except property belonging to the United States and to municipal corporations, and property held for the benefit of churches, religious societies, charitable, educational, literary, or benevolent institutions or orders, and also cemeteries: *Provided*, that no property whatever, held or used for investment, speculation or rent shall be exempt, other than bonds of this State and of the United States Government, unless said rent or the interest on or income from such investments shall be used exclusively for religious, charitable, educational, or benevolent purposes, or the interest upon the bonded indebtedness of said religious, charitable, or benevolent institutions.

Our former letter refers specifically to section 304 of the Machinery Act, and it is suggested that perhaps I did not fully consider section 493 of the Revenue Act. I have very carefully read Mr. Fuller's letter of January 2.

We have not considered that there is any definite conflict between these two sections of the law. We have heretofore had occasion to examine section 493 of the Revenue Act, with some care, as it applies to the charters of certain charitable and educational institutions, as, for example, Wake Forest College and Meredith College, which had tax exemption clauses. At that time, we thought this section to be confined rather closely to the subject of repeal, and did not consider that the exceptive provisions in the statute could operate to enlarge exemptions provided in the Machinery Act. In other words, the statute seeks to repeal exemptions from taxation included in the charters of corporations, and the exception in the statute is a mere limitation upon the effect of such repeal. I understood that the society or association suggested by Mr. Fuller to be a new enterprise, or, at least, one whose charter did not contain such exemptions. This may be an unauthorized assumption on my part. I did not think that there was anything in the clause of the Machinery Act referred to which would repeal any exemption contained in the charter of such association. This would only be done by section 493 of the Revenue Act, and only to the extent therein named, and with the exceptions laid down in the statute.

I do not think that the proviso in section 493 has anything to do with the situation.



## INHERITANCE TAX—REVENUE ACT—SECTION 12

13 April, 1933.

I note from your letter the following: A decedent died on March 11, 1931, leaving a net estate of \$7,181.50 to his widow. His specific exemption of \$10,000 applied, and no inheritance tax was assessed. The widow died on September 29, 1932, leaving a net estate of \$21,263.89 to a nephew. The imposition of the inheritance tax on that part of the property which was derived from the husband's estate is protested, and you inquire whether or not the tax may be lawfully imposed. The current Revenue Act, Chapter 427, Public Laws of 1931, Section 12, reads in part:

Where property transferred *has been taxed under* the provisions of this article, such property shall not be assessed and/or taxed on account of any other transfer of like kind occurring within two (2) years from the date of the death of the former decedent: Provided, that this section shall apply only to the transferees designated in Sections three (3) and four (4) of this article.

It will be noted that the two years had not elapsed between the death of the original decedent and the widow. It will be noted also that the nephew comes under Section 4 of the article referred to.

This section was put into the law in order to prevent not double taxation, but too frequent taxation of the same descending property. By the very reading of it, it is made plain that it can have no application to a case where the tax was not actually imposed, as was not done in this case, because of the fact that the total of the estate was less than the exemption. The tax may be lawfully imposed and collected.

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INCOME TAX—STOCK IN FOREIGN CORPORATIONS

21 April, 1933.

A taxpayer makes report of income from stock in foreign corporations. He contests liability for the special tax on such income imposed by Section 311½ of the Revenue Act, on the ground that he has listed such stocks for ad valorem taxation. It appears that his method of listing is by inclusion of the stocks as a part of his solvent credits, and then undertaking to deduct from the total of claimed solvent credits, including the stocks in the foreign corporations, indebtedness as permitted by Section 518 of the Machinery Act. The result of such method is that the claimed deductions absorbed value of all solvent credits, including value of these stocks in foreign corporations.

The procedure is not permissible. The taxpayer has no right to claim stock in foreign corporations as solvent credits, and use indebtedness as an offset or deduction against it in listing his property. If the owner of stock in foreign corporations fails to pay the special tax on income imposed by Section 311½ of the Revenue Act, it becomes the duty of the Commissioner of Revenue, under Section 215.g to certify the amount and value of such shares of stock to the governing boards of the county and town, of which such taxpayer is a resident. It then becomes the duty of taxing officials of such county and town to place such stocks, with their value, on the tax books

of the county and town, and assess against them the ad valorem taxes, as is done with respect to other property. In no case is the taxpayer entitled to any deduction of indebtedness against the value of such shares of stock.

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REVENUE ACT—PROFESSIONALS—PRIVILEGE TAX—STATE EMPLOYEES

4 May, 1933.

Your letter of May 3, with enclosure, letter from Dr. F. M. Register, received.

I have uniformly held directly to the contrary to the contention made by Dr. Register.

Section 109 of the Revenue Act imposes a privilege tax on certain professions. You will note the part in parenthesis: (including all persons enumerated in this section employed by the State, county, municipality, a corporation, firm or individual). That was put in for the purpose of imposing the tax on those doing work for a single employer, including the State and local subdivisions of government.

I have always advised that the person so employed is liable for the tax. I pay it myself, although my work is limited entirely to work for the State.

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INCOME TAX—DEDUCTION OF LOSS ON SALE OF STATE BONDS

6 June, 1933.

After mature consideration, I have come to the opinion that a corporation is entitled to deduct from its basis for computation of income tax a loss upon the sale of State bonds for the income year.

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LISTING OF POSTAL SAVINGS FOR AD VALOREM TAXATION

9 June, 1933.

Uniformly it has been held by this office that postal savings in the United States Post Office are the subject of State tax. This year's Machinery Act definitely requires such postal savings to be listed for taxation. See section 517, subsection (21). Postal savings do not come under the prohibition against taxing obligations of the Government.

However, when such postal savings have reached the maximum limit allowed by the Government and are converted into United States bonds or other permanent obligations of the Government, this obligation cannot be so taxed.

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PROCESS TAX—REFUND TO FEDERAL LAND BANK

28 June, 1933.

I am in receipt of your letter of June 27, re: refund to Federal Land Bank of process tax. You state that the process taxes in question were not paid under protest. Consequently, I advise that no refund should be made.



## TAXATION—LAUNDRY

30 June, 1933.

We undertake to answer additional inquiries submitted to us by your Department and by certain city attorneys with respect to construction of section 150 of the Revenue Act as follows:

The effort is made in that section to assimilate within certain limits for purposes of taxation the soliciting of laundry or linen and towel supply business to the conduct of such business at a definite location. The taxes levied are upon a graduated scale based upon the population of cities and towns.

A principal difficulty arises in the effort to construe paragraph 4 of the section with respect to soliciting such business in a town where the located laundry or linen and towel supply business is not carried on. This grows out of the expression therein to the effect that "said tax to be in a sum equal to the amount paid by said establishments actually engaged in such business in said city or town." I have reached the conclusion that the expression, "actually engaged in such business" refers to the conduct of a located laundry or linen and towel supply business in such place. Upon that construction, then, in places where no laundry and/or linen and towel supply business is carried on, no tax is imposed upon the soliciting of such business. In any town where a located laundry and/or linen and towel supply business is carried on, the soliciting of such business is taxable under the section, and the soliciting of such business in such town would carry the same tax as is imposed under the graduated scale in the section upon such located business.

Each city or town may levy the license tax in accordance with the graduated scale set out in the section. A county may also levy a tax upon each form of the business as taxed in the section in every town in the county where it is carried on, the tax so imposed by the county to be at the rate as fixed in the section for the State tax.

The proviso at the end of paragraph 5 of the section gives difficulty because the \$50.00 tax there referred to is at variance with the graduated scale in the first paragraph. We have reached the conclusion, however, that these difficulties may be disregarded and set aside, and must be for the reason that the tax attempted to be imposed by the proviso is so clearly discriminatory that we think it could not be sustained and, therefore, in all cases the State, county and city tax should be imposed in accordance with the graduated scale in the first paragraph of the section.

It is understood, of course, that the graduated scale in so far as the county, city or town tax is concerned is the maximum rather than a definite imposition of a rate by the act.

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PEDDLING

11 July, 1933.

You ask opinion of this office as to the applicability of section 121, Revenue Act of 1933, to sale of fresh fruits and vegetables in the way generally known as "peddling."

Subsection (c) of section 121 defines certain methods of sale of such fresh fruits and vegetables as being peddling within the meaning of the act. However, the concluding sentence of subsection (c) is as follows:

Nothing in this section shall apply to the sale of all farm products raised on the premises owned or occupied by the person, firm or corporation, his or its bona fide agent or employee selling the same.

This means, then, that the grower of farm products may himself carry such products about to any place within the State and sell them in the way commonly known as "peddling," without being liable to the peddler's tax imposed by this section. Nor would there be liability for the peddler's tax where the sales are so made by a bona fide agent or employee of the grower, by carrying them about and selling them from place to place throughout the State in the way commonly known as "peddling."

Normally, it will not be difficult to determine whether a particular person is actually an employee of the grower. Difficulty may, and possibly will, arise in determining whether the person who is so engaged in peddling such farm products is a "bona fide agent" of the grower. I think that such agency could exist within the meaning of the statute only if the title to the farm products is retained by the person actually growing and raising them.

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#### PEDDLING

13 July, 1933.

You ask the opinion of this office with respect to application of subsection (f) of section 121, Revenue Act of 1933, to certain facts and conditions as presented to us. Subsection (f) is as follows:

(f) The provisions of this section shall not apply to any person, firm or corporation who sells or offers for sale books, periodicals, printed music, ice, coal, wood for fuel, fish, beef, mutton, pork, bread, cakes, pies, products of the dairy, or articles of their own individual manufacture, but shall apply to medicines, drugs, or articles assembled.

Those coming within the terms of said subsection are exempt from the provisions of section 121, imposing a tax upon peddlers. They are not required to pay any peddler's tax. The subsection applies to "any person, firm or corporation who sells or offers for sale \* \* \* articles of their own individual manufacture.

It is clear that one who undertakes to sell "medicines, drugs or articles assembled" by peddling them is liable to the peddler's tax, as imposed by section 121. Application of the act to such persons would seem to present no considerable difficulty.

"Articles of their own individual manufacture" may be sold by the person or individual who so manufactures them, without being liable for the peddler's tax. Such articles may also be sold by corporations, by and through their employees, in the manner usually known as "peddling," without rendering such corporations or such employees liable for the peddler's tax imposed by section 121.

In order that the sale in this manner may be exempt from the tax, it must be of articles, the title to which, at the time of the sale, is in the manufacturer.



If there is an intermediary who has such title, or who obtains a profit upon such sale, selling the goods by the peddling method, he would not be exempt from the tax.

Of course, the peddler's tax does not apply where there is a bona fide taking of orders, and a later delivery of the goods from stock to the purchaser. This applies generally to all sales by the peddling method. An agent or employee of the manufacturer may sell the goods of such manufacturer to the purchaser by the ordinary "peddling" method. Where the sale is made by the employee of the manufacturer, and the goods obtained for delivery to the purchaser from a jobber interested in them, either by having complete title or by having an interest in the purchase price, the exception in subsection (f) would not be operative, but such type of sale would be "peddling," within the meaning of section 121.

To come within the exceptive terms of subsection (f), the articles discussed here as so sold, must be of the "individual manufacture" of the person, firm or corporation selling them. The term "manufacture" has a definite and restricted meaning. It means something more than "processing." The "manufacture" of an article involves a complete change of form. As an illustration, processing raw peanuts by parching and salting them, but leaving them in the original form, would not be a "manufacture" of such articles.

It is true that the department cannot set up an arbitrary length of time which must elapse between the taking of the order and the delivery of the merchandise, so as to occasion inapplicability of the tax. Generally speaking, orders for the goods must be taken before the goods leave the place of business of the seller. A person is a peddler who carries his goods about with him, without having a definite purchaser therefor.

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APPLICABILITY OF THE EMERGENCY REVENUE ACT (ARTICLE V, REVENUE ACT OF 1933) AS IMPOSING A TAX ON THE SALE OF BEER AND OTHER BEVERAGES UNDER THE BEVERAGE CONTROL ACT, (CHAPTER 319, PUBLIC LAWS OF 1933)

18 August, 1933.

I have been asked to determine whether an additional sales tax is imposed on the sale of beer and other beverages permitted to be sold under the Beverage Control Act, by virtue of Article V of the Revenue Act, known as the Emergency Revenue Act.

In construing the Emergency Revenue Act, we must bear in mind the circumstances under which it was enacted, its purpose and the situation it is intended to relieve, all of which is stated in the Act. It is extraordinary in character and frankly does not reflect the State policy in taxation; it is a temporary measure adopted to meet a serious emergency, not intended as an ordinary levy of taxes but as a special levy for a special purpose. For these reasons, we might expect to find its application outside of and beyond the scope of laws imposing other taxes on the same subjects.

The Emergency Revenue Act is, in form, a part of the general Revenue act and is Article V of that Act; but it is practically autonomus and might stand alone as a separate Act without the aid of machinery other than that included in it. Critically examined many of the references contained in it must be regarded as self-references, rather than references to other parts of the general Revenue Act or other laws.

The Beverage Control Act imposes an excise tax on the sale of beer and other beverages named therein of sufficient magnitude to leave no doubt as to its character, and it constitutes a substantial contribution to the total tax receipts. The Emergency Revenue Act is sufficiently inclusive in its terms to impose an additional tax on the sale of these beverages, also substantial as to the amount of returns.

The principal argument suggested against the application of the Emergency Revenue Act to the beverages taxed by the Beverage Control Act is that it would amount to double taxation. Obnoxious "double taxation" has a rather definite meaning in the law and is usually confined to property taxes. Cooley on Taxation 224. The North Carolina Constitution, however, contains no prohibition against double taxation nor does the Federal Constitution contain any provision which would prevent double taxation by the State. *Town of Kenilworth v. Hayden*, 197 N. C., 85; *Person v. Board of State Tax Commissioners*, 184 N. C., 499; *Commissioners of Durham County v. Blackwell Durham Tobacco Company*, 116 N. C., 448.

In connection with privilege and excise taxes, when we examine the structure of our tax laws carefully looking through the form to the substance, many instances of apparent double taxation will be found to occur. If we concede, however, that there is any presumption against duplicate taxation with reference to a tax of this nature, which is doubtful, I am of the opinion that the express wording of the Act is sufficient to overcome any such presumption and make the Act applicable as imposing this additional tax on the sale of beer and other beverages authorized by the Beverage Control Act.

Section 420 of the Revenue Act reads as follows:

Additional Tax—The tax imposed by this act shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business taxable hereunder, except as in this act otherwise specifically provided. But no county, municipality, or district shall be authorized to levy any tax by virtue of the provisions of this article.

Referring to the expression "business taxable hereunder," the "hereunder" refers to the Emergency Revenue Act itself and not to the Revenue Act generally. The purpose was to make it clear that if other taxes were laid upon the business of selling commodities included as taxable under the Emergency Act, these were not tolled, nor was the sales tax imposed by the Emergency Act dispensed with by them; the latter tax should be an additional tax.

I do not think we need waste much time over the expression "condition precedent to engaging in business." The Beverage Control Act requires a bond to secure the tax as a "condition precedent to engaging in the business" and this is quite the same thing. The payment of the tax at least becomes a condition precedent to continuing the business.

In view of the want of similarity between the tax levied by the Emergency Act and that levied by the Beverage Control Act, there is little merit in the suggestion of double taxation. Properly considered it does not even challenge the applicability of the Emergency Revenue Act upon any consideration of natural justice or of law. The Beverage Control Act levies a well understood and common type of excise tax on the sale of beverages, which tax the seller must pay. The Emergency Revenue Act levies a tax which the seller



is required by Law to pass to the consumer, which he actually does collect from the consumer. In its very substances, therefore, these taxes are not incompatible when imposed on the same privilege or business at the same time.

Referring again to Section 420, the conclusion of the first sentence is significant. The tax is levied as an additional tax upon all subjects coming within the description "except in this act otherwise specifically provided." This logically refers us to Section 405 as containing the only express provision by which the general operation of this tax is limited and in which the beverages in question are not mentioned. Indeed, this is a distinct and important section of the law, apparently intended to be exhaustive as to the commodities intended to be exempted.

It will be noted that the first exemption named in section 405 relates to the sale of gasoline. This is significant because of the fact that notoriously the gasoline tax is passed on to the consumer and, evidently, the Legislature did not intend to place the additional burden of the emergency revenue tax on the consumer. To my mind the exemption of the sale of gasoline from the tax, coupled with the fact that the sale of the beverages in question is not mentioned at all, is strong evidence that the Legislature did not mean to exempt the latter or rather, that it did mean that beverages should pay the tax levied under the emergency revenue act. The Legislature had found a logical line of distinction between the two, and both the imposition of the tax and the exemption noted is in accordance therewith.

My conclusion is that the tax levied by the emergency revenue act is applicable to the sale of the beverages permitted to be sold under the Beverage Control Act and constitutes an additional tax thereupon.

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CHAPTER 375, SECTION B—INTERPRETATION OF TERM "FOR HIRE"  
AS THEREIN DEFINED

24 August, 1933.

Kindly disregard my letter to you under date of August 17 in reference to the above.

It will be noted that this paragraph includes "every arrangement by which the owner of a motor vehicle for compensation permits such vehicle to be used for the transportation of the property of another"; then the provision exempts from the tax imposed "arrangement by which two or *more* farmers share in the cost of transporting their farm produce or livestock from the farm to the first or primary market, whether the truck be jointly or severally owned."

This provision or exemption must be strictly construed against the taxpayer. In order that "two or more farmers" may take advantage of this exemption, there must be an actual arrangement made between them for the hauling of their crops to the market and a mutual sharing of the cost of transporting same between them.

We do not think that the section would apply to two or more farmers who both have crops to market and who transport their crops in a truck to the market, and who share in the cost of transportation of the same to their mutual advantage, regardless of the ownership of the truck as between them. We

think the provision or exemption was placed in the section for their benefit.

We think the section would apply to the owner of a truck who has no interest in the crops to market, but who hauls the products of his neighbors' farms to market for his own private gain, and who makes such hauling his business.

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EMERGENCY REVENUE ACT, SECTION 404, SUBSECTION 12—TAX ON  
EXTRATERRITORIAL SALES

8 September, 1933.

The above cited section of the Emergency Revenue Act, otherwise known as the Sales Tax Act, provides in substance that the maximum tax on the sale of a single article of merchandise shall be \$10.00. With special reference to the purchase of automobiles, there is provided as an additional means of enforcement of the payment of tax that the Department of Revenue shall not issue a license plate for any new motor vehicle until the tax levied for the sale of the same has been paid.

The question here is as to the applicability of the tax when the sale of an automobile has been consummated entirely beyond the State territory.

If the motor vehicle has been delivered to the purchaser outside of the State, it is obvious that all parts of the transaction have been completed in another State, and therefore the tax cannot apply. The State is powerless to tax property or transactions entirely beyond its borders.

Some question might arise, however, as to the applicability of the tax in case the car is purchased outside of the State and delivered in the State. In my opinion, however, the imposition of the tax in such a case would be in violation of the commerce clause of the Federal Constitution, and therefore void.

It follows, of course, that the Revenue Department would have no right to withhold a license plate in order to aid the collection of an invalid tax.

Certainly, however, any person driving a motor vehicle over the roads of this State without license or license tag, no matter where obtained, would be guilty of a violation of law. It is my opinion, however, that it would be too technical to apply this principle to a person who is merely delivering a car to a customer, or to a customer who was bringing a car home for storage until the license plate could be obtained.

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TAX ON FRANCHISE BUS CARRIERS

12 September, 1933.

You ask this office if motor vehicles operated for hire by public service companies should pay a tax under Section 203 current Revenue Act, or pay the tax prescribed for such carriers under Chapter 375 current laws.

Chapter 375 prescribes the rate at which such carriers shall be taxed. It lays down an annual license tax of ninety cents per hundred pounds weight and in addition thereto, six per cent of the gross revenue derived from such operation. This act also provides that this shall be a compensatory tax for the use and privilege of the public highways of the State, and it further



expressly provides that no additional franchise tax, license tax or other fee shall be imposed by the State against any franchise motor vehicle carrier taxed under this act.

We do not think that the Legislature intended that these motor vehicle carriers should be double taxed. There is no clear intent to levy a double tax as that laid down in section 203 current Revenue Act.

We, therefore, conclude that this class of motor vehicle carrier should be taxed under Chapter 375, current laws, and not under section 203 of the current Revenue Act.

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#### TAX ON LAUNDRIES

28 September, 1933.

You ask this office for an opinion as to whether or not the laundry operated solely for the benefit of one of the State institutions is subject to privilege tax as set out in the current Revenue Act. The answer is no.

However, if a laundry operated by one of the State institutions goes out into the commercial field and does business for the public in competition to independent laundries, then they would be subject to the tax. On the other hand, if the institution laundry would confine its operation solely for the benefit of the college or its activities, and not operate it as a competitor to independent laundries, serving the public generally, it would not be subject to the tax.

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#### SECTION 203, REVENUE ACT 1931

6 October, 1933.

Franchise tax assessed under Section 203 is prospective in character. It is a tax upon the privilege exercised by a corporation for the current year, that is the year in which the report provided for in said section is made, and it is not a tax for the privilege of existing during the preceding year. The gross earnings of the previous year is used merely as a measure of the tax.

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#### LISTING FOREIGN STOCKS FOR LOCAL AD VALOREM TAXATION

14 November, 1933.

I have examined the tax return of the above named taxpayer, and note that he has listed for ad valorem taxes, stocks in foreign corporations, as provided in the current Revenue Act; and in my judgment he has complied with the law and no income tax can be charged upon the dividends.

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#### LICENSE CHARGES FOR CONTRACT HAULERS OF UNITED STATES MAIL

30 December, 1933.

You inquire of this office as to which classification of license charges, for the operation of trucks, should be applied to an operator handling, under

contract, United States mail between a post office and railroad depot, using a truck for that operation.

You point out in your letter that the Motor Vehicle Law prescribes three classifications of license charges for the operation of trucks—one schedule for the private hauler, another schedule for the contract hauler, and the third schedule for the franchise hauler. The question is what the charges shall be for plates used on such a motor vehicle.

Of course, if the contract hauler is engaged in a general business, and his operations are not strictly confined to carrying the United States mail, he should be charged the rates for a contract hauler, as the federal question would not enter into it at all. However, if he is contracting solely with the Federal Government, and the vehicle is not used for any other purpose, then the question arises as to how far the State may go in placing a burden upon a federal agency. I do not think it is necessary here to go into any fine distinction between the position of a person contracting with the United States and a person employed by the United States, in the furtherance of a federal purpose. Probably such a distinction could not be maintained in this case.

While in the case of interstate commerce it has been held that a state has the right to make a reasonable charge for the use of its improved highways, as well as to require a license plate or tag for police purposes, and in one case Justice Holmes very aptly said, "Interstate commerce must pay its way"; there is still a question where the federal agency, or agencies, in the discharge of their governmental duties, that is to say, a strictly federal instrumentality, could be required to do more than to comply with the requirements of the State, which might be referred to as its police power, that is to say, the purchase of a license plate with that in view. Still, if we concede that an additional charge might be made with respect to the use of an improved highway, we meet a further difficulty in the application of the law requiring a contract hauler's license in this case. In the old set-up, a for-hire license tag furnished at a given charge, and a private license tag, so-called, at another and smaller charge, there was no attempt to recognize the fact that the owner of a private truck might have not engaged in such a business as would put the roads under greater service than the owner of a for-hire vehicle. The proceeds from the for-hire license, however, were divided between the Revenue Department and the Highway Department, in a proportion which recognized the use of the roads as a separate and distinct element from the revenue end of the charge; that is to say, the Revenue Department had to account to the Highway Department for a sum which would be the equivalent of a private license charge on the motor vehicle of the type used by a for-hire operator. This being a revenue charge then in part, it obviously could not be applied to cars used in interstate commerce.

Probably to remedy this situation, a clause was inserted in the Act, (Chapter 375, Public Laws 1933) which declared that the charges made were exclusively for the use of motor vehicles on the highways. Frankly, we do not think that this would be maintainable when resisted by law, on account of the fact that there would then be the same glaring inequality between such a tax on the for-hire, or contract motor vehicle, and one used in a private business; and, we think, going through the form to the substance, it would be recognized that



the imposition of the tax, partly at least, would be for revenue purposes.

We think the identical question was raised in the case of *Johnson v. Murrell*, 65 Law Edition, 126-128. Mr. Justice Holmes, delivering the opinion of the court in this case, says: "Here the question is whether the State can interrupt the action of the general government itself, with regard to taxation, no matter how reasonable or how universal and undiscriminating the State's inability to interfere has been regarded as established since *McCullough v. Maryland*, 4 Whiton, 4 Law Edition, 579."

It is well settled by the decisions of the United States Court, as well as other courts of the land, that the supremacy test has been employed, not only to restrain state taxation of federal operations and instrumentalities, but also to prevent any exercise of state power or control in such federal domain. (*Ohio v. Thomas*, 173 U. S., 276, 43 L. Edition, 99; *Flaegarety v. Hanson*, 215 U. S., 515, 54 Law Edition, 307.)

The State of North Carolina has no power to levy a revenue tax upon any instrumentality of the government, and, in our opinion, it would not only be unwise to raise that question in the present case, but the imposition of the contract hauler license tax in the given case would be beyond the power of the State.

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#### FOREIGN CORPORATION FRANCHISE TAX

5 March, 1934.

You inquire of this office whether or not a company acting as a trustee for the holders of notes secured by real estate mortgages, and who collect rents from such property to keep up fire insurance and payment of taxes, would be subject to franchise tax.

We are of the opinion that such company acting as trustee for the holders of such notes is liable for corporate franchise tax.

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#### GASOLINE TAX—SALE ON GOVERNMENT LANDS

8 March, 1934.

The question is whether the State can collect from an oil company an excise tax based on sales of gasoline to, and deliveries at, an army post exchange located on a military reservation.

It was held in the case of *People v. Standard Oil Company*, 22 Pacific (2) 2, that the same was due under the statute, and was constitutional, the court saying that an army post exchange was an organization largely engaged in business of a private nature, and that it was not one of those agencies through which the Federal Government directly exercised its constitutional or sovereign power.

This case was reversed—the court holding that a state cannot legislate effectively concerning matters beyond her jurisdiction and within territories subject only to control by the United States.

C. S. Sections 8053 to 8059 (b) prescribe the way and manner, and for what means, the United States may acquire title to any parcel or tract of land in the State of North Carolina. These sections prescribe that "exclusive juris-

diction in and over any land so acquired by the United States shall be, and the same is, hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this State."

By the authority and holding of the above case, which appears in 78 Law Edition, page 525 (Advance Sheets), we are of the opinion that gasoline sold on the reservation of any army post in North Carolina by the Army Post Exchange situated thereon is not liable for a State tax.

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SECTION 120, REVENUE ACT, SEWING MACHINE COMPANIES—SECTION 162,  
REVENUE ACT, CHAIN STORE TAX

9 March, 1934.

You state that the Singer Sewing Machine Company, under Section 120 of the Revenue Act, pays a base license tax of \$100.00 for the privilege of selling sewing machines in this state. It also pays under that Section a tax of three per cent on the total receipts during the preceding year ending May 31 from the sale, lease or exchange of sewing machines and/or accessories within the state.

In addition to these two taxes, the Company pays a tax of \$10.00 for each agent or agency selling sewing machines within the state. You state also that it is the understanding that the Company has a number of located agencies in the state at which sewing machines are carried in stock, and sales made from the stock on hand. You inquire if the company would be liable for the chain store tax levied under Section 162 of the Act in addition to the tax levied under section 120. The answer is yes.

We do not think the company would be liable if it merely maintained store rooms for stock and accessories for the convenience of the several agents over the state, but if it maintains a store room from which sales of stock are made to the general public, it should also pay tax under Section 162.

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SECTION 109, CURRENT REVENUE ACT—CIVIL ENGINEERS, ARCHITECTS,  
STRUCTURAL ENGINEERS

9 March, 1934.

The taxpayer contends that he is not a civil engineer, within the meaning of the above Section of the Revenue Act; that, instead, he received a degree of bachelor of science in civil engineering, but as a matter of fact, his profession is that of a structural engineer. His letterhead carries the title of Architect and Engineer.

We do not think that because of the fact that this man is a structural engineer would exempt him from the provisions of the privilege tax assessed under the above Section. Certainly, the tax is to be assessed against him as an architect, if not an engineer.

We do not think, however, that he should be assessed a tax for both professions.



CONSTITUTIONAL LAW—JUDGE OF COUNTY COURT—DIMINUTION OF SALARY—  
SUBJECT TO INCOME TAX

10 March, 1934.

In your letter of February 23 you ask the opinion of this office as to whether the salary of a Judge of a County Court is subject to the income tax.

The Constitution, Article IV, Section 18, is as follows:

Section 18. Fees, salaries, and emoluments. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this article; but the salaries of the judges shall not be diminished during their continuance in office.

In *Long v. Watts*, 183 N. C., 99, our Supreme Court held that under the above quoted section of our Constitution the salaries of the judges of the Supreme and Superior Courts are not subject to the income tax. In his concurring opinion, at pages 113 and 115, Chief Justice Clark said that only the salaries of these judges whose offices are created by the Constitution are so protected by this constitutional guarantee. The particular question presented was, however, not directly involved, and, therefore, not directly passed upon by the court in that case. And it has not been directly presented to and decided by our Supreme Court.

The most recent case from another jurisdiction more nearly in point as an authority is that of *Gresser v. O'Brien, Mayor*, 263 N. Y. Sup. 68, decided March 5, 1933 in the Supreme Court of New York. The Constitution of New York contains the provision that "all judges, justices, and surrogates, shall receive for their services such compensation as is now, or may hereafter, be established by law; provided only that such compensation shall not be diminished during their respective terms of office." In construing that constitutional provision the New York Court held that it did not prevent a diminution in the salary of justices of the Court of Special Sessions, established by the Legislature of that State. That opinion of the New York Supreme Court, Appellate Division, was on January 11, 1934, affirmed, without written opinion, by the Court of Appeals of that State.

As throwing some light on the problem, it may be here noted that in *Queen v. Commissioners of Haywood County*, 193 N. C., 821, our court held that the General Assembly might abolish a Recorder's Court in the midst of the term of its presiding officer.

I am of the opinion that the salary of a judge of a County Court is not protected from diminution by the Constitution, Article IV, Section 18, and, therefore, that it is subject to the income tax imposed by the Revenue Acts.

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INCOME TAX—ANNUITIES

29 March, 1934.

A taxpayer made a gift to the Union Theological Seminary at Richmond, Va., for approximately \$21,000. The Seminary agreed to return to the taxpayer an annuity of \$1,200 per year as long as she might live.

We see no reason why this \$1,200 per year should not be taxed as normal income.

REVENUE ACT—SALES TAX—LIABILITY OF FEDERAL LAND BANK ON PURCHASES  
MADE BY IT.

19 April, 1934.

In reply to your letter of April 16th, we will say that, in our opinion, the sales tax provided in the Revenue Act does not apply to the Federal Land Bank, the Raleigh Production Credit Association, or The Home Owners Loan Corporation, or other similar Federal agencies; and that this application is excluded both by the terms of the Revenue Act itself and by the principle that a Federal agency cannot be so taxed, in the absence of authority of Congress of the United States, which, in these cases, does not exist.

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INHERITANCE TAX—TRUST ESTATE

3 May, 1934.

We have examined the trust agreement between the above named decedent and the Guaranty Trust Company of New York, and are of the opinion that the funds covered by this agreement should be included in the appraisal of the estate for inheritance tax assessment, under the authority of the rule laid down in *Banks v. Doughton*, 188 N. C., 762, *Trust Company v. Doughton*, 187 N. C., 264, and *Banks v. Doughton*, 189 N. C., 50.

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CHAIN STORE TAX—GENERAL OWNERSHIP

16 May, 1934.

You state that Mr. N. B. Smithey of North Wilkesboro is interested in a chain store known as Smithey Stores. He owns all of the stock in a store at Boone, Taylorsville, Lenoir, Wilkesboro and North Wilkesboro, and has paid the chain store tax on these five stores. In addition, there are four more stores located in Sparta, West Jefferson, Hickory and Newton. Each of these four stores is a partnership. Our information is that Mr. N. B. Smithey owns 49/50 of the Sparta store and W. E. Smithey 1/50; that N. B. Smithey owns 49/50 of the West Jefferson store and Mr. T. R. Parker 1/50. N. B. Smithey owns 3/4 of the Hickory store and G. M. Kirkpatrick 1/4. Mr. Smithey owns 3/4 of the Newton store and R. M. Kirkpatrick 1/4. There is no central book-keeping or accounting office covering all these stores. Each store keeps its own records, makes its own purchases, and has a separate management. Mr. Smithey admits that if any of the local managers fail to follow any of his instructions, that he has authority to discharge them.

We are of the opinion that the set-up as above described brings all of these stores "under the same general ownership," and, therefore, would be liable for the chain store tax.

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TAXPAYERS' BAD CHECKS LOST BY DEPUTIES

7 June, 1934.

You inquire of this office if taxpayers' bad checks, placed in the hands of deputies for collection and such deputies have misplaced or lost them—if the



deputy could be held responsible for the face amount of the check. The answer is no.

A check is a mere promise to pay. In order that the collector might be held civilly liable for the amount of such check, it would have to be shown that he had collected same and failed to remit the proceeds thereof to the Department.

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#### INHERITANCE TAX—DEED CONVEYING FEE SIMPLE TITLE TO GRANTEE

25 June, 1934.

You ask the following question:

"Would a deed conveying a fee simple title to a grantee, reserving a life estate in the grantor, be subject to inheritance tax if made and recorded more than five years prior to the death of the decedent?"

We think that such an inheritance would be taxable.

You further inquire as follows:

"A deed was made and recorded in 1878, conveying a life estate to a grantee, remainder to his heirs, if any, and if no heirs, to revert to heirs of the grantee's brother. Where the grantee, holder of the life estate, died without heirs, would the heirs of his brother be subject to inheritance tax?"

In this case, the reversion of this estate passed to the heirs of the brother of the grantee of the life estate upon a contingency, that contingency being the death of such grantee without leaving any heirs. In this case, it is our opinion that this estate would be subject to inheritance tax.

## OPINIONS TO STATE HIGHWAY AND PUBLIC WORKS COMMISSION (Including State's Prison)

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CONCURRENT SENTENCES—IN RE PAUL JACOBS

13 September, 1932.

In your letter of September 12, you state that one Paul Jacobs was sentenced on September 8, 1930 from Wake County to the State Prison for an indeterminate sentence of not less than one nor more than two years, having been convicted of house breaking and larceny. Jacobs escaped from the Prison Colony at Sanatorium on September 30, 1930. While thus at large, he was convicted in the Superior Court of Gaston County on April 13, 1931 for store breaking and larceny, and sentenced to the State Prison for two years, and I assume was returned to the Prison in a reasonable time thereafter, where he now is.

You enclose, in this connection, the certified copies of commitments to prison, both from Wake and Gaston Counties.

It is observed that when convicted in Gaston County, the court did not there, in its judgment, provide that the service of the term given the prisoner in Gaston County should begin at the expiration of the term to which he was sentenced from Wake County.

In my judgment, the prisoner, under the circumstances mentioned, serves both terms concurrently, and this, notwithstanding the fact that he was sentenced at different times and from different courts. He should be discharged from prison when he has served the term expiring at the latest date. You can readily understand that this does not always mean at the expiration of the longest term, where the service under one term, although it may have been shorter, has been interrupted by escape and the service therefor suspended for sometime—in other words, upon serving both terms concurrently.

This opinion is given you with the understanding that the endorsement on the two commitments "24351" and "25354," made upon the Wake County commitment and the Gaston County commitment respectively, were placed there by the prison authorities, and that the notation written in the face of the Gaston County commitment "Expiration of No. 24351" is likewise a memorandum placed on the commitment by the prison authorities, and was not in this commitment when the prisoner was received. Of course, such a statement in the commitment when the prisoner was received, would indicate that the judgment of the court below was in accordance therewith. I take it that I am correct about this.

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DISPOSITION OF DEAD BODIES

26 July, 1933.

Answering your letter of July 24, I will say that, apparently, the correspondence between yourself, Mr. Mangum and Mr. Yelverton, has completely cleared



up the situation with regard to the disposition of dead bodies to be made under C. S. 6785 and 6790.

The Board of Anatomy has nothing to do with the disposition of the bodies of dead persons unless they come squarely within the provisions of this act; and if they do, the said Board of Anatomy, or the persons designated by them, have the right to receive such bodies, and the Warden is bound to deliver them to the Board or its representative. As to bodies which are not to be delivered to the different medical schools for purposes of dissection, this law has nothing to do with them, and I do not understand that the Board of Anatomy is claiming any rights with regard thereto or responsibility therefor.

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CURRENT REVENUE LAW—ADVERTISING ALONG HIGHWAYS—DESTROYING AND REMOVING SIGNS

5 February, 1934.

You have called my attention to Section 151 of the Revenue Act of 1933, authorizing the removal of advertisements and signs along the highway, when the state revenue tax has not been paid thereon. The question presented to me is whether the employees of the State Highway and Public Works Commission may remove or destroy such signs, on which the tax has not been paid, either upon the "right of way" of the State highways, or from private property along the road adjacent to the highway.

There is no question, of course, as to the right of removal when the offending sign is on the right of way. But the authority of this statute might be questioned when we come to the summary destruction or removal of signs erected or established on private property by contract between the owners of such property and the advertiser.

If the advertising matter is treated as a nuisance, and if the removal or destruction of the signs could be sustained, to the exercise of the police power there could be no question. To what extent the statute may involve the exercise of police power is, however, a matter of serious consideration, inasmuch as it appears to proceed only upon the idea of the collection of revenue. Still, instances are not wanting where laws have been upheld, which authorized the destruction of property involved, where there has been a failure to pay a privilege tax. The question here is whether or not private property can be invaded for such purpose. It raises the question as to whether or not this would be taking property without due process of law.

Where the mandate of the statute is so clear, however, we do not feel that we can consistently advise that its provisions may not be carried out. I think this matter ought to be decided by a test case brought for that purpose, and I will be glad to talk this suggestion over at your convenience.

## OPINIONS TO STATE BOARD OF HEALTH

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### MATTRESSES MADE BY BLIND PERSONS—MUST HAVE LICENSE BUT NOT REQUIRED TO PAY FEE—TAG OR ADHESIVE STAMP

6 June, 1933.

The Attorney General has ruled in a letter to Mr. H. L. Stanton of June 1, 1933 that where mattresses are made solely by blind persons, they are not required to pay the tax; but must comply with all other requirements of the act and should procure the license although not required to pay the fee therefor.

I think that any merchant who had the mattresses in hand might be required to attach the tag and adhesive stamp.

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### SALARIES AND FEES—QUARANTINE OFFICERS

6 March, 1934.

In response to your inquiry of this morning, it is my view that under C. S. 7150 payment of compensation to quarantine officers should be limited to the maximum amount as therein set forth each month, but that such maximum amount may be paid to such officers in a particular month where the fees do not equal such sum if the credit upon such fees for a preceding month or months during a calendar year would equal, but not exceed, such maximum amount for such month.

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### CHAPTER 339, PUBLIC LAWS 1933—MANUFACTURE AND RENOVATING OF BEDDING

13 April, 1934.

In our letter of March 30 relative to the above, we construed certain sections of the above chapter in response to your inquiry of March 19. We wish this letter to supplement that opinion by a construction of the first paragraph of section 2 thereof which reads as follows:

Sterilization. No person shall in making, remaking, or renovating a mattress for another person, use any previously used material which, since last used, was not sterilized by a process approved by the State Health Officer.

We construe this paragraph to mean that only the material which is used to renovate any mattress shall be sterilized before it is added to the old mattress; that is to say, the word "use" in the second line of said paragraph is construed to mean "add any previously used material."

In other words, it is the opinion of this office that the Legislature did not intend that where a mattress was brought in for renovation, that the renovator would be required to sterilize the entire mattress, but only that material which was used and added to such mattress in its remaking or renovating.



## OPINIONS TO DIRECTOR OF LOCAL GOVERNMENT

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### UTILITY BONDS—LIEN OR CLAIM UPON UTILITY AND/OR REVENUES

20 February, 1933.

You inquire as follows: "I shall thank you for your opinion as to whether or not the holder of a Utility Bond issued by a North Carolina municipality has any lien or claim upon such utility or the revenue derived from its operation. It is, of course, assumed that the bond is one of an issue of bonds issued for the purpose of constructing the utility. Also, if the holder of such bond should accept a general refunding bond in exchange therefor, I should like to have your opinion as to whether such holder would thereby release his lien or claim upon the utility or the revenue derived from its operation."

I do not understand that the holder of a "Utility Bond" or bond issued with respect to any public utility has thereby any lien on the utility concerned or the revenues derived therefrom. However, the Municipal Finance Act, (Consolidated Statutes, section 2959) provides as follows:

So much of the net revenue derived by the municipality in any fiscal year after paying all expenses of operating, managing, maintaining, repairing, enlarging and extending such enterprise, shall be applied, first to the payment of the amount necessary to be raised by tax in such succeeding year for the payment of the principal of said bonds.

This is a departure from the general policy of taxation in this State, as it seems to recognize specific service taxation, as opposed to general-purpose taxation. I think this is a fair reasoning as to the purpose of this part of the statute, because it is put in juxtaposition with a clause relating to special assessments for local improvements, where that idea frankly prevails. It is apparently the purpose of the laws to relieve the general tax as far as possible, on the theory that such general tax would be levied indiscriminately on those who benefit from the utility, and those who do not. This reasoning would weaken the theory that a holder of such a bond could invoke this statute to have the net revenue applied to the interest on his debt. I really can not say what the courts might say to this, and in the limited time I have been able to give to it, I have found no precedent or authority. I feel sure, however, that such a debt would so lose its identity when merged into general refunding bonds that the bondholder would lose all claim of such a nature with regard to the utility involved.

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### BOARD OF EQUALIZATION AND REVIEW—RAISING VALUATION OF PROPERTY

19 July, 1933.

Your letter of July 17, with enclosure, letter from Mr. Thomas J. Gill, Jr., Auditor of Scotland County, received.

No, the Board of Equalization and Review does not have the right to raise

the valuations of property simply in order to obtain a total valuation sufficient to realize certain desired revenues.

I think that section 523.7 contemplates actual consideration of the valuation returned to them, so as to reach correct results as to such valuations and the equalization thereof.

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#### SPECIAL TAXES FOR POOR FUNDS

9 August, 1933.

A letter was written from this department to the Commissioner of Public Welfare on June 30, 1933, in which the opinion was expressed that section 1297.28 sufficiently covered the levy of special taxes for the support of the poor and that there was no limitation thereon. We are still adhering to that opinion.

Subsection 28 was enacted long before the change in the Constitution fixing the 15 cent limitation, and providing exceptions thereto; subsection 8½ was passed since that time.

There have been reasons advanced which might be considered as argument that section 8½ was intended to be exclusive in this respect, and to fix the limitation of 5 cents upon special taxation for this subject. But they are far from satisfying. While the Supreme Court has held in *Railroad v. Lenoir County* 200 N. C., 494, that section 8½ is sufficient legislative authority for the imposition of the special tax for this purpose and that its provisions are broad enough to cover generally the support of the poor, it has not held that it is exclusive. Without challenging the correctness of the decision, it seems to me that the legislative mind approached this matter from a different angle, and that the act has in mind only the institutional burden which rested upon the county. In fact, section 8½ is much more general in its provisions and covers a much larger area of purpose than does subsection 28. The latter section is directed more especially to the support of the poor.

In *Railroad v. McArtan*, 185 N. C., 201, the court held that the provisions of the Constitution were applicable to an act of the legislature, although the latter preceded the constitutional provision in point of time, and that such a previous enactment, general in its character, would under the Constitution, afford authority for special taxation. I think that the power of the Constitution flowed into and validated subsection 28 as applying to this subject, and as there is no limitation expressed therein, I hold that such special taxation may be placed, without regard to the limitations imposed in subsection 8½

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DOUBLE OFFICE HOLDING—MEMBER, LOCAL GOVERNMENT COMMISSION AND COUNTY  
OR CITY OFFICIAL

31 August, 1933.

Your letter of August 31 received. The positions of member of the Local Government Commission, of a board of county commissioners and a board of town commissioners or aldermen are all offices within the meaning of Constitution, Article XIV, section 7. Therefore, one who undertakes to serve on the Local Government Commission and at the same time hold one of these other



positions would be violating that provision of the Constitution. And the Court has held that when a person, holding one office, accepts and enters upon the duties of another, he thereby vacates the first office. See *Barnhill v. Thompson*, 122 N. C., 493; *Midgett v. Gray*, 159 N. C., 443.

## OPINIONS TO STATE BOARD OF ELECTIONS

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### NOMINATION BY PARTY TO FILL VACANCY—DEATH OF JUDGE

22 September, 1932.

You inquire how a nomination may be made by a political party for a vacancy in the office of Superior Court Judge for the Third Judicial District, created by the death of Judge Garland E. Midyette.

Giving consideration to the constitutional provisions with respect to Superior Court Judges, Constitution, Article IV, sections 10, 11 and 21, C. S. 6053 and related statutes, and to an opinion of this office, given by former Attorney General Manning April 10, 1922, I have reached the conclusion that the nomination may be made "by the action of the Executive Committee" of the particular party of the Third Judicial District.

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### VACANCY IN NOMINATION—CANDIDATE FOR SENATOR—HOW FILLED

26 September, 1932.

I am in receipt of your letter of September 26, relating to filling vacancy in the nomination of candidate for Senator of the Third Senatorial District caused by resignation of Mr. W. H. S. Burgwyn, nominee of the Democratic party for that office.

Nomination for such vacancy under such circumstances is controlled by C. S. 6053 as follows:

"In the event of such vacancy in the case of a district office, the same may be filled by the action of the Executive Committee for such District of such political party."

You will note that the vacancy is to be filled "by the action" of the Executive Committee of the particular party, which means that the selection may be made by the District Executive Committee itself, or that the Committee may provide other means for such nomination under the rules or plan of organization of the political party making the nomination.

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### ELECTION LAW—PARTY AFFILIATION—CANDIDATE ON TWO PARTY TICKETS

19 October, 1932.

I herewith send you a copy of letter received today from Mr. R. S. Roland, who appears to be Chairman of the Yancey County Republican Executive Committee. Yancey is a non-primary county for nomination of legislative and county candidates. C. S. 6054, as amended from time to time. Under section 127, pamphlet copy of election law, as taken from Australian Ballot Act, an independent candidate must comply with certain requirements. One of these is an affidavit that he is not affiliated with any political party.



Under C. S. 6022, one who seeks nomination in the primary must file a notice of candidacy in the terms as therein set out. The filing of such notice is not required of a candidate seeking nomination for county or legislative offices in a non-primary county, as under C. S. 6054. Under section 126, pamphlet copy of the election law, boards of elections are to place on the official ballot names of persons nominated "in a primary, convention, etc." Therefore, with respect to presidential electors and county and legislative candidates, in a non-primary county, the nominees of the political parties as properly certified are entitled to places on the official ballot. Such nominees of political conventions under such circumstances are not required to file any notice, give any pledge, or indicate any party affiliation, as are candidates in the primary under C. S. 6022.

Assuming the facts to be correctly stated in this letter from Mr. Roland, I think that Edge is entitled to a place both in the Republican and the Independent columns on the official ticket. I believe that it is a matter for the consideration and supervision of the State Board of Elections, rather than for an official opinion from me. The man Edge may have declined to run as a candidate on the Republican ticket. If not, he clearly has the right to have his name on the ticket, both in the Republican and in the Independent columns.

I will withhold reply to Roland until I have your views about the matter.

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#### MANNER OF MARKING BALLOTS WHEN NAME IS WRITTEN IN OR STICKER IS USED

1 November, 1932.

In response to your inquiry regarding the manner in which ballots should be marked when a name is written in on the ballot or a sticker is used on the ballot, I advise you as follows:

When a name is erased on the official ballot and another written in, or when a sticker is pasted over a name, the new name is treated just like any other name on the ballot. If the voter marks in the square opposite that name, he must mark in the squares opposite every other name for which he wishes to vote. To vote for the whole party ticket, including the written or pasted name, he must leave the squares unmarked and mark in the party circle at the top of the ballot only. If he marks in the circle and also opposite the written or pasted name, it will be counted for that one name only.

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#### PRIMARIES—CANDIDATES—FILING FEES

23 January, 1934.

In my opinion, the filing fees for candidates for nomination for any Congressional or State office, should be fixed upon the statutory salary, rather than the percentage to which they have been temporarily reduced.

In so far as the Judges of the Supreme Court are concerned, their salaries have not been reduced, and could not be reduced, from the amount fixed in the statute during their term of office. They voluntarily return to the State treasury 10 per cent of the salaries which they receive.

In the case of Congressmen, you are aware of the fact that their salaries may be restored at any time, by executive order, to the amount named in the Act of Congress.

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#### FILING NOTICE OF CANDIDACY

20 April, 1934.

In your letter of April 20 you state that in last Sunday morning's mail, April 15, there was a letter addressed to the State Board of Elections containing the Notice of Candidacy of W. H. McElwee for the Democratic nomination as Solicitor of the Seventeenth Judicial District, together with his filing fee. The envelope containing this notice was postmarked "North Wilkesboro, April 14." You further state that there was in the same mail a letter from Mr. Grant Bauguess enclosing his Notice of Candidacy for the Republican nomination as Solicitor of the Eleventh Judicial District, together with his filing fee. The envelope containing this notice was postmarked "Jefferson, April 15." You further advise that neither of these two letters was in the post office box of the State Board of Elections at six o'clock p.m. Saturday, April 14, which was the expiration of the filing time for said offices.

These two Notices of Candidacy were returned by you for the reason that you did not think that they were filed within the time prescribed by Section 6022 of the Consolidated Statutes, and you ask for a ruling for the State Board of Elections as to whether these two Notices of Candidacy should have been accepted by the State Board of Elections as having been filed within the time prescribed by said Section, or whether they were properly returned as not having been filed within the time prescribed by said Section.

If you will refer to my letter to the Chairman of the State Board of Elections of April 28, 1930, same being printed in my Biennial Report of 1928-1930, on page 237, you will find that that letter answers the specific question which you have raised at this time. I think it well to quote part of that letter, which gives the reasons for my ruling in that case and in the present case. In that letter I wrote you as follows:

C. S. Section 6022 requires that candidates for the offices named "shall file with the State Board of Elections at least six weeks before such primary election is to be held" the notice and pledge therein set out. The time for such filing expired at midnight, April 25. The question, then, is as to whether delivery of the notice to the United States mails is a sufficient filing under the terms of the statute, although the notice through this channel does not reach the State Board of Elections, or any of its members or officers, by the time required.

The subject is fully discussed in 2 Words and Phrases, and 2nd S. 531:

A paper or document is said to be "filed" when it is delivered to the proper officer and lodged by him in his office.

The words "to file" mean "receiving a paper into custody."

A paper is "filed" when it is delivered to the proper officer and by him received to be kept on file.

The above quotations are fully supported by citation of authorities in 2 Words and Phrases, supra.



This office has consistently advised that the notice of candidacy must be "filed" within the terms of C. S. 6022 by an actual delivery to the State Board of Elections or one of its officers or members by midnight of the last day named for such filing. I am of opinion that under the terms of the statute as uniformly interpreted and construed, Mr. Martin did not "file" his notice of candidacy in accordance with its requirements.

The General Assembly of 1933 amended C. S. 6022 by providing that such candidates "shall file with and place in the possession of, the State Board of Elections, by six o'clock p.m. on or before the seventh Saturday before such primary election" notice of such candidacy. This amendment is in line with the construction heretofore placed upon that section by this office, and especially in the letter of April 28, 1930 above referred to. If the matter were in doubt, it has been abundantly clarified by that amendment of 1933, and I therefore advise that the Secretary of your Board acted properly and in accordance with the statute in taking the position that these notices from Messrs. W. H. McElwee and Grant Bauguess were not filed within the time prescribed by the Statute.

## OPINIONS TO STATE BOARD OF CHARITIES AND PUBLIC WELFARE

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20 August, 1932.

You submit to me inquiry for opinion, with respect to service by a county superintendent of schools as county superintendent of public welfare, with particular reference to situation existing in Swain County.

That county has a population less than 32,000. No superintendent of public welfare having been elected, the duties of that position, by the express language of C. S. 5016, devolve upon the county superintendent of schools. I here quote from that section two sentences relating to expenses and duties of such county superintendent of schools, when the duties of superintendent of public welfare are thus cast upon him:

Whenever by such action a county superintendent of public instructions becomes ex officio county superintendent of public welfare, he shall receive no salary in addition to that received as county superintendent of schools, but the board of education, by and with the approval of the board of commissioners, shall furnish him such clerical or other assistance as it deems necessary to have the compulsory school attendance law fully enforced in accordance with the rules and policy laid down by the state board of education, and the board of county commissioners shall furnish a reasonable expense fund for carrying out the other duties attached by law to the office of county superintendent of public welfare. All such duties shall be as binding upon the county superintendent of public welfare as they would be in case he were not county superintendent of schools.

The language of the statute is clear and explicit. It would gain nothing from an attempt by anyone to explain or construe it. None of us have any power to change a statute, regardless of anyone's wishes that it might be otherwise.

It will be observed that upon failure to elect a county superintendent of public welfare, these duties are cast upon the county superintendent of schools, and not upon the chairman of the board of county commissioners nor the chairman of the county board of education.

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BASTARDY

1 August, 1933.

The 1933 Act (Chapter 228, Public Laws 1933) made drastic changes in our bastardy laws. The old Bastardy Law might still be in force in its main features, notwithstanding that this old law is wiped out by the Repealing Clause of the new law, section 9. The only bastardy proceeding which can now be brought is under this Chapter 228, and it proceeds upon the theory of neglect or refusal on the part of the father to support his illegitimate child.



This is made a misdemeanor, and under section 7, the court is permitted to sentence the defendant to prison for a term not to exceed six months. This, of course, takes it out of the jurisdiction of the Justice of the Peace. Section 7(e) does recognize some compensation to the mother, confined to the necessary expenses of birth of child and suitable medical attention for her, but this seems to be purely incidental. Cases accruing before the ratification of the new act are tried under the old. Sec. 2.

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#### CONFINEMENT OF DELINQUENT CHILDREN IN JAIL

10 November, 1933.

Inquiry has come to this department regarding the power of the Juvenile Court, or officer having the matter in hand, to detain juvenile delinquents in jail. C. S. 5048, relating to this matter, may be interpreted as meaning that these children may not be confined in jail, such place being designated in the statute as one where they may come in contact with hardened criminals; and in that view, it would not be a compliance with the statute to provide separate quarters for them in the jail, and undertake thereby to see that they did not come in contact with such criminals. I think this is the better view.

The whole theory of the law respecting the treatment of delinquent children, is based upon the idea that they are not criminals, and I think this contributes somewhat to a proper interpretation of this statute.

Where the juvenile is charged with the commission of a felony, the punishment whereof may be more than ten years in prison, and the child exceeds fourteen years of age, provision is made in the law—C. S. 5046, sub-section 6—to bring the matter to the attention of the Superior Court; and when that is done, and in that particular case, I think it would be competent to detain such person in jail.

It is impossible for us to say at this time what the Court would decide about the matter, but at any rate, upon the facts presented to us in the particular case brought to our attention from Mecklenburg County, I cannot approve of the detention of juveniles under such circumstances and conditions as being in compliance with the statute.

## OPINIONS TO DEPARTMENT OF CONSERVATION AND DEVELOPMENT

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### LIABILITY OF DEPARTMENT OF CONSERVATION AND DEVELOPMENT FOR COSTS IN CRIMINAL ACTIONS

30 August, 1932.

Replying to yours of this date, based upon letter of Mr. W. R. Robinson, of Yancey County, which you enclose, I will say that the Department of Conservation and Development is in no way liable for costs in cases brought in Yancey County by the Game Warden for violation of the game laws; nor is there any authority for your department to pay the same.

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### HUNTING—GROUPS OF BOYS AND GIRLS GOING ALONG WITH HUNTERS—LICENSE

17 September, 1932.

It has been brought to your and my attention that several groups of boys and girls from different schools or church congregations desire to accompany hunters who are hunting, pursuing or undertaking to take opossum. It is suggested that this is in the nature of an outing on the part of these boys and girls, and that they do not actually engage in the hunting. The hunters themselves have licenses. It is desired to know if such groups of boys and girls may, without having the hunting license, accompany these hunters.

By section 27, Chapter 51, Public Laws of 1927—the North Carolina Game Law—no person is permitted to “take any wild animals or birds without first having procured a license as provided by this act.” Section 2 of the act defines “take” as meaning and including “pursuing, shooting, hunting, killing, capturing . . . and all lesser acts, such as disturbing or annoying birds and animals or placing or using any net or other device for the purpose of taking birds or animals, whether or not they shall result in taking such birds or animals.” To “hunt,” means “to pursue or strive to catch or kill, as game or wild animals.” To “pursue,” means “to chase with the aim of overtaking.” These, I think, are the primary meanings which would be ascribed to terms “hunt” and “pursue” as contained in the act.

The law does not permit any special exemptions to such groups of boys and girls so as to permit them to hunt without the license. The law applies to them as well as to adults. Acts which would be a violation of the law by adults would be no less so if engaged in by such groups of young people.

Any one can readily conceive of facts and circumstances where these young people simply looked on at the hunt, but took no part in it so as to make them violators of the law. If they in any way take part in the activities of the hunt as defined by the statute, they, of course, would be guilty of violating the law.

It is a practical impossibility to go further than this in any general statement on the subject. As a matter of fact, it would be rather difficult for such group of



young people to accompany the hunters and retain at all times the status of mere on-lookers. And every case must be determined upon its own particular facts. Continually these facts vary, and constantly a very slight change in them would make the difference between violation, or non-violation, of the law.

If it is desired to clarify the matter so as to give some exemption to groups of this kind, the best course is to have legislative action on the subject.

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#### LIABILITY OF WARDEN FOR TRESPASS ON PREMISES

12 December, 1932.

In answer to yours, relating to liability of wardens for trespass on premises in fighting fire, we advise that, in our opinion, a warden would not be liable for going upon or crossing the lands of a person, when engaged in the duty of fighting fire, by virtue of his office, nor would persons who, when summoned by him under the law, be so liable. I think section 6137 of the Consolidated Statutes would bar any action, either criminal or civil.

As a matter of fact, an "action for trespass" is a civil action, in the nature of damages.

I think the statute would apply to a Federal officer whose duty requires him to suppress or prevent fires in the territory.

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#### APPOINTMENT COUNTY RURAL POLICEMAN AS COUNTY FOREST WARDEN

3 August, 1933.

As a county rural policeman and a county forest warden both have very extensive powers, particularly that of arrest, under certain circumstances, I am forced to the conclusion that each is a holder of an office. This being true, it would not be proper or indeed legal to appoint a county rural policeman as forest warden, as it would be double office holding within the meaning of the Constitution, Article XIV, Section 7.

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#### EXEMPTION OF FOREMEN OF CCC FROM JURY SERVICE

26 January, 1934.

Federally employed foremen of the Civilian Conservation Corps are not included in the exemption from jury service as set forth in C. S. 2329.

In any event, exemption from jury duty is a matter to be passed upon and determined by the Court in which the person has been summoned for such service. Therefore, one seeking such exemption from any cause, should present his request to the judge of the particular court.

## OPINIONS TO COMMISSIONER OF BANKS

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### UNLAWFUL USE OF THE WORD "TRUST" IN THE NAME OF CORPORATIONS

11 October, 1932.

In my opinion, the entire purpose of sections 1124 and 1142 of the Consolidated Statutes, was to prevent the use of the word "trust" as a part of the name of corporations, on the theory that the use of such a word would be deceptive to the public. I do not think that it was intended that the use of such a word in a corporate nature would bring such a corporation under the supervision of the Banking Department, regardless of the nature of its business. On the contrary, I think it is intended that the use of that word shall be limited to corporations, which, by reason of the business they conduct, have been placed under the supervision of the Banking Department.

I think, however, it is your duty, in regard to such corporations having such word in the corporate name, to make such investigation as you think proper, in order to see whether or not they are engaged in the business which should be supervised by the Banking Department, and which should be subject to examinations under the Banking Laws. If the business is not of that character, I also think that it is your duty to call the attention of the offending corporation to sections 1124 and 1142 of the Consolidated Statutes, and to the penalties therein imposed, in order that they may take the necessary steps to remove the word from the corporate name and comply with the law.

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### GUARDIANSHIP—CORPORATE FIDUCIARIES—CLERK SUPERIOR COURT

21 October, 1933.

You submit to me letter of October 17 of Mr. C. A. Taylor, President of Wilmington Savings and Trust Company, accompanied by letter of that date to that bank from Mr. W. N. Harriss, Clerk of the Superior Court of New Hanover County. You seek the opinion of this office as to whether a Clerk of the Superior Court must, under C. S. 6376 et seq., accept such trust companies as fiduciaries without requiring them to give bond.

The opinion of this office as heretofore given is that it is discretionary with Clerks of the Superior Court to require bond of such corporations as fiduciaries. The case of *Quinton v. Cain*, 203 N. C., 162, referred to in Mr. Taylor's letter, simply holds that when a Clerk (as he may) permits such corporations to qualify and act in that capacity, neither the Clerk nor the sureties on his official bond are liable for failure to require bond. In other words, requirement of bond, or permission to act without it, is for determination and within the discretion of the Clerk of the Superior Court.



INDUSTRIAL BANKS AS STATE BANKS—MORRIS PLAN BANK OF ASHEVILLE—  
STATUTORY DEFINITION

25 October, 1933.

In your letter of October 19th you inquire whether the Morris Plan Bank of Asheville, which is an industrial bank, is a State Bank under the laws of North Carolina defining and limiting the use of the term "bank."

Amongst the various statutes which might bear upon this subject, I think it only necessary to consider C. S. Section 216 (a) (Laws 1921), and C. S. Section 225 (m) (Laws 1923).

Section 216 (a) contains the following paragraph:

The term "bank" shall be construed to mean any corporation, partnership, firm or individual receiving, soliciting, or accepting money or its equivalent on deposit as a business: Provided, however, this definition shall not be construed to include building and loan associations, Morris Plan companies, industrial banks or trust companies not receiving money on deposit.

Such a definition appeared to be necessary by way of exclusion of Morris Plan and Industrial banks from the application of the further provisions of the banking law relating principally to supervision, regulation, examination and liquidation of banks, which was not intended to include Morris Plan and Industrial banks.

This law relates back to Chapter 4, Public Laws of 1921.

Section 225 (m) of the Consolidated Statutes in the main embodies Section 13, Chapter 225, Public Laws 1923. Under the Public Laws of 1923 referred to, industrial banks were placed under the supervision and control of the Banking Department, and no such distinction and definition as was provided theretofore in Section 216 (a) was necessary. In fact, upon reading C. S. 225 (m), it will be found that many sections theretofore exclusively applying to commercial banks were made to apply to industrial banks, and in particular, Section 216 (a) just referred to, and it is provided that they "shall be construed to be applicable to industrial banks, in so far as they are not inconsistent with the provisions of this article" (that is Article 8).

Consolidated Statutes 216 (a) is a part of Article 1.

In my opinion, the apparent purpose, and certainly the effect of C. S. 225 (m) is to repeal the provision in Section 216 (a) excepting Morris Plan companies and industrial banks from the general definition of banks therein contained, and that they are now State Banks, just as are commercial banks, within the meaning of this law.

## OPINIONS TO STATE HOSPITALS AND INSTITUTIONS

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CH. 152, P. L. 1921—BLIND STUDENT—SCHOLARSHIP IN ANOTHER STATE—MEANING OF TERM "SCIENTIFIC."

18 August, 1932.

Your letter of August 17 received. Chapter 152, Public Laws of 1921, provides for aid to students of your school "to pursue any course of study, profession, art or science in any university, college or conservatory of music" approved by the Board of Directors of the School. A proviso at the end of section 1 of the act is "that no part of this appropriation shall be available to any blind student pursuing a literary or scientific course in any college, school, or university situated outside of North Carolina."

One of your students is offered a scholarship of \$250 by the American Foundation for the blind for the purpose of taking training in a school of osteopathy in Missouri. You inquire whether the proviso quoted above will prevent your Board of Directors from allowing him aid out of the fund set up in said Chapter 152, Public Laws of 1921.

Construction of the word "scientific" as used in this proviso is here involved. A valid argument could be presented both for and against the contention that the term "scientific" applied to a course in a school of osteopathy. However, in the main portion of that section the terms "profession, art or science" are used, apparently in contradistinction with each other.

Giving consideration to the whole section, and undertaking to give proper relationship to the terms used, I reach the conclusion that a course of study in such school of osteopathy would be of a professional, rather than scientific, nature. I, therefore, advise that aid may be extended to this student for the purpose indicated in such school in another State.

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### SURPLUS FUNDS IN HANDS OF STATE HOSPITAL

29 July 1933.

I have examined the file presented in the above matter. I have also read carefully Mr. Dunlap's letter to you on the subject, and will say that Mr. Dunlap is entirely correct in his statement of the law. I note also from the letter of Mr. K. W. Parham, certified public accountant, that of the \$10,794.69 on hand, \$5,285.81 represents a surplus originating from deposits on behalf of patients, none of which can now be separated into items so as to be earmarked for identification. Undoubtedly, all of this fund escheats to the University by virtue of the Constitution, as suggested in Mr. Dunlap's letter. I assume from the manner in which the balance sheet is gotten up that the remaining \$5,508.88 may be identified and itemized with respect to the names of patients to whom it belongs—or did belong. Such part of this as is necessary to pay the maintenance of such patients in the Hospital should be devoted to that purpose. As to the remaining part, it would go to the distributees of the estates of those who have died, and if none such could be found, this also would escheat to the University.

I hope that this explanation clears the matter.



## OPINIONS TO GREATER UNIVERSITY OF NORTH CAROLINA

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### TUITION FEES

6 July, 1932.

You have asked for an interpretation of section 5800, Consolidated Statutes of North Carolina, relating to tuition fees and free tuition in the University. For convenient reference, I am attaching a copy of this statute to this letter.

Briefly, this statute requires the trustees to fix the tuition fees, in their discretion, taking into consideration the nature of each department, and the cost of keeping and maintaining it, and to require that these fees be "paid in cash or by good note"; and the trustees are further instructed "to charge and collect from each student at the beginning of each term an amount sufficient to pay room rent, servant's hire, etc., for the term." But the statute further says that "no young man of good moral character shall be denied admission because of his inability to pay cash or give a good note." Relating to this feature of the law, it is further provided in the statute that "all other students" (that is, all students not in a normal department), "shall be required to give their notes, with the understanding that should they become able, they shall pay the balance due the University at the time of their graduation in full."

In carrying out this law in a practical way, I understand that it is frequently stated by students desiring admission that they are unable to borrow money, even in case they are able to give good notes, or notes that have good endorsement. In my judgment, taking the student's unendorsed and unsecured notes is a matter of last resort. I think it is clearly the intention of the law that the tuition fees, which, of course, do not make the University self-sustaining, should be paid by the students when it is humanly possible so to do. Therefore, it is the duty of the officers having this matter in charge for the trustees to use every reasonable effort to see that the fees are paid in cash, or that good notes are received therefor. In case a student is not able to borrow the money locally upon such a note, I think it is proper for the authorities of the University to call the attention of the student desiring admission to the fact that the University has a loan fund, if such fund is available at the time, and insist that the student may borrow from the same upon giving the proper note, and complying with the terms under which such loan fund is available to the student.

In my opinion, a large discretion is given to the authorities who act in behalf of the trustees in carrying out the provisions of this law, and that this discretion extends to a deciding of the question, within reasonable limits, as to whether the student applying for admission is, as a matter of fact, unable either to pay cash or give a good note.

## UNIVERSITY OF NORTH CAROLINA—LIABILITY OF STATE AGENCIES FOR TORTS

2 November, 1933.

Ordinarily, governmental agencies of the State are not liable for torts committed by their agents and employees. In some jurisdictions this is said to rest on the legal principle that the sovereign cannot be sued, and that a suit against such an agency, looking through form to substance, is a suit against the state. But, in this jurisdiction, the non-liability of a State agency of that character for torts is said to be derived from a settled policy of the law on that subject against suits of this character as affecting the State.

In *Moody v. State Prison*, 128 N. C., 12, 14, it is said: "But even if such authority (to sue) was given, it would give only actions ordinarily incidental in its operation, and would not extend to a cause of action like the present." In that case, the action was for tort arising out of negligence of an employee, *Carpenter v. Railroad*, 184 N. C. 400, 403. Therefore, the fact that the University is made a corporation, and has the capacity to sue and be sued (C. S. 5782) presents no argument by that fact to sustain liability for tort.

The real question here is whether the University is such a governmental agency as to come within the above rule of non-liability. Some question has been raised in this respect as to State supported schools, and the case of *Hopkins v. Clemson College*, 221 U. S., 636, has been relied upon to support the view that they are liable. The Hopkins case is referred to and distinguished in *Carpenter v. Railroad*, *supra*, at p. 403, in an opinion by Justice Adams, and the real significance of the decision in that case is clearly stated in the summary given. There it is pointed out that the college was "so managing the land of the State as to damage or do away with private property without due process of law," which was contrary to the Constitution. But it is also stated, "The college was not acting in a governmental capacity."

The general effect of the paragraph referred to in the opinion in *Carpenter v. Railroad* is to leave a question as to whether or not a State school is such a governmental agency that its activities throughout their whole range might be considered "in the prosecution of a governmental function." But the Hopkins case *arguendo*, in its attempted distinctions and refinements, is so contrary to principles of law theretofore, and indeed since, universally accepted that it must be considered to form an exception to the cases dealing with this subject, and of no great value as an authority.

My judgment inclines to the view that the University of North Carolina, created in obedience to the Constitution, Article IX, Sections, 6, 7 and 8, is quite as much a governmental agency as was the State Prison Department when the latter was sued in *Moody v. State Prison*, *supra*, or the Highway Commission, when action was brought against it in *Carpenter v. Railroad*, *supra*. I know of no reason why the detention of prisoners, together with the incidental activities occasioned thereby, is more of a governmental function than the education of the children of the State, undertaken by an agency created for that purpose, and under a Constitution which recognizes such activity as being a governmental purpose and duty. In my opinion, the functions performed by the University of North Carolina are governmental throughout their entire range, rendering the agency itself immune from



actions of the kind we are considering. *Jones v. Commissioners*, 130 N. C., 452; *Bourn v. Hart*, 93 California, 338.

In my opinion, therefore, the University would not be liable in actions for tort by persons injured by motor vehicles used for the purposes enumerated in your letter.

59 C. J. p. 196, Section 340, note 60; *Robinson v. Washtenaw*, Circuit Judge, 228 Mich., 225, 199 N. W., 618; *Zoeller v. State Board of Agriculture*, 163 Ky. 446, 173, S. W. 1143.

As a practical question, however, I think the taking out of liability insurance against personal and property damage is a matter of discretion, and within your sound judgment. Of course I have no assurance as to what our Courts might say on this subject, and there may be a moral consideration bearing upon the question of public safety.

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WORKMEN'S COMPENSATION ACT—STATE EMPLOYMENT—UNIVERSITY EMPLOYEES  
AND TEACHERS

13 February, 1934.

You inquire whether members of the teachers staff of the State's educational institutions are excluded from the benefits of the Workmen's Compensation Act, by reason of the fact that this act has been held not to be available for teachers in the public schools to which the State has appropriated a fund for an eight months term. No doubt you have in mind the recent decision in the case of *Perdue v. State Education Commission and the Trustees of the Statesville Graded Schools*. That case holds that teachers of the public schools are not employees of the State of North Carolina.

While the decision in this case is more far reaching than is generally recognized, I think it is only necessary to say here that the essential difference between the situation of a teacher in the public schools and a teacher in one of the State Educational Institutions is this: Under the *Perdue* case the court has held, practically, that the state has not taken over in a strict sense the free public school system, but has merely appropriated a fund for its support and has set up machinery, bureaus and offices to see that the appropriation is properly administered and applied. Perhaps the provision in the School Machinery Act prohibiting the use of the funds for any purpose connected with the Workmen's Compensation Act had a persuasive influence on the court in arriving at its conclusion. At any rate, as I have said, the decision in that case is based upon the holding that the teachers mentioned are not employees of the state.

This cannot be true of teachers in the State's educational institutions, and there is no reasoning in the *Perdue* case from which such a conclusion could be reached. In my opinion employees in the State institutions are left as heretofore, and may have the benefit of the Workmen's Compensation Act.

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NRA CODE—APPLICATION TO CERTAIN CASES

3 March, 1934.

Replying to your letter of March 1, 1934, I will say that in my opinion the NRA Code has no application to any of the classes mentioned in your

letter, 1 to 5 inclusive. They are not to any degree competitive, and represent service to restricted groups which might, in fact, be called self-service.

Nevertheless, in my opinion, as a matter of policy and of fairness and justice, the provisions of the NRA Code should be followed as far as it is practicable to do so at least in its minimum requirements, as applied to each of the classes you name.



## MISCELLEANOUS OPINIONS

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### GRAIN ALCOHOL, PURCHASED BY PHYSICIANS, DRUGGISTS, ETC.

13 December, 1933.

You ask my opinion as to conditions under which druggists may lawfully obtain grain alcohol for use in compounding, mixing and preserving medicines.

A part of Section 19, Chapter 1, Public Laws of 1923 (The Turlington Act) is as follows:

The provision of this act shall not apply to grain alcohol, received by duly licensed physicians, druggists, dental surgeons, college, university, and State laboratories, and manufacturers of medicine, when intended to be used in compounding, mixing, or preserving medicines or medical preparations, or for surgical purposes, when obtained as hereinbefore provided: *Provided*, however, that nothing contained in this act shall prohibit the importation into the State of North Carolina and the delivery and possession in the State for use in industry, manufactures, and arts of any denatured alcohol or other denatured spirits which are compounded and made in accordance with the formulae prescribed by acts of Congress of the United States and regulations made under authority thereof by the Treasury Department of the United States and the Commissioner of Internal Revenue thereof, and which are not now subject to internal revenue tax levied by the Government of the United States.

The regulations of the Treasury Department and the Commissioner of Internal Revenue have heretofore required possession of permits by druggists and physicians desiring to receive such grain alcohol. Assuming that such Federal permits are no longer necessary, the question then open is as to what State laws regulate the matter.

By Chapter 97, Public Laws of 1915, brought forward in C. S. 3394-3396, a permit from the clerk of the Superior Court was required in order to obtain such grain alcohol. These sections, however, were repealed by Chapter 204, Public Laws of 1921. It follows then that no State authority is now clothed with authority to require or issue permits to druggists in connection with receiving such grain alcohol for the purposes named. I am, therefore, of the opinion that physicians, druggists, etc. as named in Section 19 quoted above, may receive and use such grain alcohol for the purposes as therein set out and this without any permit from any State authority.

All such persons receiving such grain alcohol are still subject to the State law with respect to the use thereof, and the use of such grain alcohol so received must be strictly limited to the lawful purposes as set out in the act. It is also my view that druggists, physicians, etc. so receiving such grain alcohol should keep a record of the amount so purchased and the disposition made of it.

Of course, such druggists, physicians, etc. must comply with any subsequent Federal regulations or interpretations with respect to receiving such grain alcohol.

## MEDICINAL SPIRITS, PURCHASED BY HOSPITALS

14 December, 1933.

You ask the opinion of this office as to the conditions under which medicinal spirits may be obtained by hospitals for use as a part of the treatment of patients.

Chapter 1, Public Laws of 1923 (The Turlington Act) contains very stringent provisions against the manufacture, sale or dealing in intoxicating liquors for beverage purposes in this State. However, a portion of section 19 of said act is as follows:

*Provided further*, that this act shall not apply to wines and liquors required and used by hospitals or sanatoriums bona fide established and maintained for the treatment of patients addicted to the use of liquor, morphine, opium, cocaine, or other deleterious drugs, when the same are administered to patients actually in such hospitals or sanatoriums for treatment, and when the same are administered as an essential part of the particular system or method of treatment and exclusively by or under the direction of a duly licensed and registered physician of good moral character and standing.

No permits from any State authority are required for the purchase and receipt of such medicinal spirits as permitted under the statute quoted above. The act does lay certain duties upon transportation companies with respect to transportation and delivery of such medicinal liquors. I quote from section 15 of the Turlington Act:

All express companies, railroad companies, or other transportation companies doing business in this State are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or, if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which book shall be opened for inspection to any officer or citizen of the State, county, or municipality any time during business hours of the company, and such book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of the State. Any express company, railroad company, or other transportation company, or any employee or agent of any express company, railroad company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor.

Of course, all persons receiving such spirits are subject to the State law with respect to the use thereof. The use of such spirits so received must be strictly limited to the lawful purposes as set out in section 19 and quoted above. Persons authorized to purchase such liquors should keep a record of the amount so purchased and the disposition made thereof.

I am not undertaking to pass upon any Federal requirements with respect to the purchase and receipt of such medicinal spirits. Of course, all existing or subsequent Federal regulations or interpretations in regard to purchase and receipt of such medicinal spirits must be complied with.



## OSTEOPATH—OBSTETRICS AND SURGERY

26 August, 1932.

In your letter of August 22 you inquire whether or not an osteopath has the legal authority to do obstetrics and surgery.

The practice of osteopathy is defined, although somewhat indefinitely, by Section 6700 of the Consolidated Statutes, which is identical with Chapter 764, Public Laws of 1907, Section 8, amended by Chapter 92, Public Laws of 1913, Section 3. It is there stated:

For the purpose of this article osteopathy is defined to be the science of healing without the use of drugs, as taught by the various colleges of osteopathy recognized by the North Carolina Osteopathic Society, Incorporated.

This definition itself, by its terms, would exclude osteopaths from the practice of obstetrics and surgery, except for the reference to the teaching in colleges recognized by the North Carolina Osteopathic Society, Incorporated. What these colleges teach and what the North Carolina Society recognizes gives a conveniently elastic coverage to the definition that would carry it beyond the range of "healing without the use of drugs."

In the decisions of the court on this subject the examinations which are required to be taken respectively by physicians and surgeons on the one hand and osteopaths on the other, have been regarded as practically decisive of this point. Under Section 6613 of the Consolidated Statutes the examination of the practitioner of medicine and surgery is required to cover the following branches of medical science; anatomy, embryology, histology, physiology, pathology, bacteriology, *surgery*, pediatrics, medical hygiene, chemistry, pharmacy, *materia medica*, therapeutics, *obstetrics*, gynecology, and the practice of medicine.

Under section 6702, the examination of an osteopath shall include subjects of anatomy, physiology, physiological chemistry, toxicology, osteopathic pathology, bacteriology, osteopathic diagnosis, hygiene, *osteopathic obstetrics*, gynecology, *minor surgery*, principles and practice of osteopathy, and such other subjects as the Board may require.

In *State v. McKnight*, 193 N. C., 723 (1902) the opinion was based mainly upon the fact that the defendant in that case, who claimed to be an osteopath, gave no drugs and did not practice surgery. It was there held that the defendant therefore did not violate the law prohibiting the practice of medicine and surgery. This was before the Act of 1907 applying to osteopathy, and stress is laid upon the examination which a licensee to practice medicine and surgery must undergo. The underlying reasoning of the case was that the law was not intended to give a monopoly or exclusive privilege to any body of men, but for the protection of the public and to prohibit imposition by any one passing himself off as competent to engage in a practice or calling of a public nature when he was incompetent to do so. It was reasoned, therefore, that osteopaths who did not prescribe drugs or other medicine, and did not practice surgery, were not amenable to that Act. See *State v. Biggs*, 133 N. C., 729, *State v. McKnight*, 131 N. C., 723, *State v. Siler*, 169 N. C., 317.

I think the inclusion of the terms "osteopathic obstetrics" and "minor

surgery" in Section 6702, Consolidated Statutes, in the light of the foregoing cases and the reasoning therein, would give osteopaths the right to practice "osteopathic obstetrics" and "minor surgery." What these two terms may include is still a matter for consideration and judicial determination. Where the limits may fall it is impossible for me to say without a further study of the history of these matters and precise information as to the manner in which obstetrics and surgery are performed by the osteopath, and particularly to what extent they are "taught by the various colleges of osteopathy recognized by the North Carolina Osteopathic Society, Incorporated," as affecting the definition of osteopathy given by Section 6700 of the Consolidated Statutes. These are questions of fact involved which might make it impossible for me, or even the court, to pass upon the question, now, as a matter of law.

I will be glad to talk with you about the matter at your convenience.

---

FEDERAL FARM SUBSISTENCE CORPORATION—GOVERNMENT OWNED PROPERTY—  
LIABILITY AND AD VALOREM TAXATION

31 July, 1934.

You state that the Federal Farm Subsistence Corporation, operated under the Department of Interior of the Federal Government, has purchased approximately 5,000 acres of land in your County. You further state that you have been unsuccessful in getting this property listed for taxation, and inquire if the same is subject to taxation.

This office does not have available a copy of the Act which created the Federal Farm Subsistence Corporation and neither is there a copy of the same in the Supreme Court Library. We are unable, therefore, to give you a satisfactory answer to the proposition stated in your letter. You perhaps could secure a copy of this law from the Director of this Corporation who, I understand, has an office in Wilmington. I do not know his name and have been unable to find it out here in Raleigh.

Unless property owned by this Corporation is especially exempt from ad valorem taxation in the provisions of the Act creating the same it would be subject to taxation. I suggest that you get in touch with the Director of this organization and ask him to state to you the law which would so exempt him. As you perhaps know, land owned by the Federal Land Banks is subject to such taxation and unless there is such a specific exemption referred to above this property would, in our opinion, be classified in the same manner as that owned by Federal Land Banks for ad valorem taxation.

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SALE OF GOODS—ORDER FORM—RELIEF FUNDS

24 August, 1933.

You state that relief is administered under your agency by the issuance of orders for food, clothing and other necessities, and/or the issuance of the commodities themselves. Your letter is accompanied by order forms which show that they are directed to a merchant, requesting him to supply the items named to the recipient, the bill to be paid out of the relief funds. Upon



this you inquire whether sale of such goods in such manner is subject to the sales tax imposed by Article V of the Revenue Act of 1933.

No. I think that the sale of such articles in the manner described is excepted from the tax by the second paragraph of section 405 of the Revenue Act.

---

INTOXICATING LIQUORS—PURCHASE AND RECEIPT OF WINE FOR SACRAMENTAL PURPOSES

1 March, 1934.

You inquire of me how wine for sacramental purposes, may be obtained under the North Carolina law.

A portion of Section 2, of Chapter 1, Public Laws of 1923 (The Turlington Act) is as follows:

Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished, and possessed, but only as provided by Title II of "The Volstead Act," act of Congress enacted October twenty-eighth, one thousand nine hundred and nineteen, an act supplemental to the National Prohibition Act, "H. R. 7294," an act of Congress approved November twenty-third, one thousand nine hundred and twenty-one.

I also quote Section 20 of the act:

It is lawful for any ordained minister of the gospel who is in charge of a church and at the head of a congregation in this State to receive in the space of ninety consecutive days a quantity of vinous liquor not greater than three gallons, for use in sacramental purposes only, and it shall be lawful for him to receive same in one or more packages or one or more receptacles.

Section 15 of that act lays certain duties upon transportation agencies in regard to records with respect to the transportation of intoxicating liquors:

All express companies, railroad companies, or other transportation companies doing business in this State are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space in which the consignee shall be required to sign his name, or, if he cannot write, shall make his mark in the presence of a witness before such liquor is delivered to such consignee, and which book shall be open for inspection to any officer or citizen of the State, county, or municipality any time during business hours of the company, and such book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of this State. Any express company, railroad company, or other transportation company, or any employee or agent of any express company, railroad company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor.

I am not undertaking to pass upon any Federal requirement with respect to the purchase and receipt of such wine for sacramental purposes. Of course, all existing or subsequent Federal regulations or interpretations in regard to the purchase and receipt of such wine should be complied with. In so far as

the State law is concerned, wine for such purposes may be obtained by the persons designated, and in the amounts as set out in Section 20 of the act quoted above. No permit from any State authority is required for the purchase and receipt of wine for such purposes.

Assuming that no permit from the Federal government is required, I am of opinion that any express company, railroad company, or other transportation company has the right to receive in another state, for shipment to you in this State, wine for sacramental purposes in the manner and as set out in the extracts from our laws as quoted above in this letter. No officer of this State is, under our present statutes, clothed with authority to issue permit to you for the reception of such wine, and, therefore, you are not required to have a permit in order to receive wine for sacramental purposes, under provisions of the statutes as quoted above.



## LEGISLATIVE REFERENCE LIBRARY

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The work of the Legislative Reference Library for the period of this report is set forth in the following report of Mr. Henry M. London, Legislative Reference Librarian:

Raleigh, N. C., July 1, 1934.

Hon. Dennis G. Brummitt,  
Attorney General,  
Raleigh, N. C.

Dear Sir:

I beg to submit herewith a report of the work of the Legislative Reference Library from July 1, 1932, to June 30, 1934.

During the foregoing period the following publications have been prepared and distributed among state and county officials and a large number of interested citizens throughout the State:

1. Following the 1932 election, a Directory of State and County Officials containing 81 pages was published and distributed. This booklet continues to be in great demand and it is hoped that its biennial publication may be continued.

2. The North Carolina Manual for 1933, containing 205 pages. Due to lack of finances it was necessary to reduce the size and scope of this edition, but the essential material bearing on the political and civic life of the State of peculiar interest to our legislators and other public officials was retained. Publication of the booklet containing the official vote was omitted, since this information was contained in the Manual.

3. Bulletin No. 10, 52 pages, containing amendments to the Consolidated Statutes enacted at the 1933 session of the General Assembly. The chapters which, in terms or in effect, amend certain chapters, sections, or sub-sections of the Consolidated Statutes have been brought forward in this bulletin and arranged according to the number of the section of the Consolidated Statutes. In each case, the chapter number is given so that reference may be made to the session laws.

4. In June, 1933, a Court Calendar covering the biennium, July 1, 1933, to June 30, 1935, was prepared and published and distributed to court officials, practicing attorneys and others interested. This publication has long been regarded as indispensable by judges, solicitors and lawyers in keeping up with the changes in the terms of court made at each session of the Legislature.

A number of matters of a legislative nature have been investigated and compiled for municipalities and persons throughout the State.

During the session of the 1933 General Assembly, 650 bills were drafted for legislators and much assistance rendered them in securing information desired on various matters of proposed legislation. This form of service is being appreciated more and more at each session of the Legislature.

Following the State Primary held June 2, 1934, a list of legislative nominees was compiled and published.

After each November election a list of the newly-elected members of the General Assembly is printed.

Respectfully submitted,  
HENRY M. LONDON,  
Legislative Reference Librarian.

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